



## The Hon Daniel Andrews MP

Premier of Victoria

1 Treasury Place  
Melbourne, Victoria 3002 Australia  
Telephone: +613 9651 5000

Professor Eleanor Bourke AM  
Chair  
Yoorook Justice Commission  
54 Wellington St  
COLLINGWOOD VIC 3066  
eleanor.bourke@yoorook.org.au

Dear Professor Bourke

Thank you for the opportunity to respond to the Yoorook Justice Commission's two Issues Papers on systemic injustice experienced by First Peoples in the Victorian criminal justice and child protection systems. Please accept this letter as part of two Whole of Victorian Government submissions in response to each Issues Paper.

As you know, the Commission was established by the First Peoples' Assembly of Victoria and the Government in 2021 with a deep, shared commitment to truth-telling as a critical element in building a new relationship between Aboriginal and non-Aboriginal Victorians. We had already begun working towards Treaty, but we recognised that without truth, there can be no Treaty.

The vital work of the Commission provides the opportunity to ensure that all Victorians can share in the true history of this State – a history of colonisation, dispossession, removal of children, criminalisation and institutionalisation, but also one of First Peoples' extraordinary strength, resilience and cultural survival in the face of oppression. We cannot change this history, but we can accept the truth of it.

Furthermore, as acknowledged in the Commission's Letters Patent and its Issues Papers on the criminal justice and child protection systems, First Peoples experience ongoing injustices. Through the act of truth-telling, we can reckon with the cause of injustices and create the opportunity to heal, and to change. When we acknowledge wrongs, everyone benefits.

It is in this spirit that these submissions are provided to the Commission. In drafting the submissions, the Victorian Government has reflected on the discrimination and mistreatment that First Peoples can often endure in the criminal justice and child protection systems. These injustices are not confined to history – they persist to this day.

The ongoing over-representation of First Peoples in the criminal justice and child protection systems is a source of great shame for the Victorian Government. The Government acknowledges the conditions and injustices that have caused this over-representation. It is also responsible for ensuring that racism and injustice are confronted and addressed.

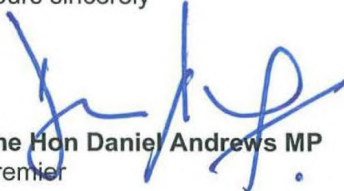
The Victorian Government is proudly the first in the nation to action all elements of the Uluru Statement from the Heart: Voice, Treaty and Truth. Through Treaty, the Government can deliver on its commitment to self-determination. Treaty is a process that offers the potential

for transformation, whereby the Victorian Government returns power to First Peoples so that First Peoples can build a positive future, on their own terms. We know that to achieve true self-determination and justice, significant structural change is required.

Treaty provides a pathway for negotiation on whether, and if so, how, a First Peoples' representative decision-making body, an authoritative Voice to Parliament and other forms of institutional oversight by First Peoples for the benefit of First Peoples, could be created. It is within the context of this First Peoples' led ambition that the Government is seeking to be guided by the Commission. I look forward to the Commission's recommendations for bold reform, and its vital contribution to the Treaty process.

The Commission's goals of healing, truth and justice are shared by my Government. We are committed to listening to First Peoples, to understanding, and to changing. And we are ready to act to prevent the recurrence of injustice and help build the foundations for a new relationship between First Peoples, the State and all Victorians.

Yours sincerely



**The Hon Daniel Andrews MP**  
Premier



# Victorian Government submission to the Yoorrook Justice Commission

Response to Issues Paper 1: Call for Submissions  
on Systemic Injustice in the Criminal Justice  
System

# Contents

Acknowledgement .....	3
Language statement.....	4
Part 1: Introduction .....	5
Part 2: The State's responsibility for systemic injustice .....	6
2.1 Contemporary systems have their roots in colonisation .....	6
2.2 The State is responsible for addressing systemic injustice .....	11
Part 3: The Victorian Government's response .....	13
3.1 The Government's commitment to self-determination.....	14
3.2 Criminal justice system reforms.....	15
3.3 Criminal justice outcomes.....	20
Part 4: Considerations for the path forward .....	25
4.1 Ensuring holistic and culturally safe support for families .....	26
4.2 Implementing improved budget and funding processes .....	27
4.3 Strengthening accountability.....	27
Part 5: Conclusion .....	29

## Acknowledgement

The Victorian Government acknowledges the Traditional Owners of Country across all lands and waters now known as the State of Victoria, and pays respect to Elders past and present.

From time immemorial, First Peoples in Victoria have practiced their Law and Lore, cared for their communities, families and children, and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources.

The Government acknowledges that First Peoples' sovereignty has never been ceded.

The Government acknowledges the profound impact of colonisation and apologises for the role governments have played. The Government acknowledges the wide-spread theft of land, dispossession of culture, removal of children, enforced poverty, dehumanisation, criminalisation and institutionalisation that colonisation entailed. The Government acknowledges that colonisation was premised on erroneous beliefs of racial superiority – and First Peoples' inferiority – and that these racist beliefs, and the systems, laws and institutions that were built upon them, persist today.

The Government acknowledges the extraordinary strength and resilience of First Peoples in the face of historical and ongoing injustices, and the survival of their living cultures, knowledge and traditions.

The Government acknowledges the First Peoples who have died in custody and the compounding impact of pain and sorrow that this has caused to First Peoples' families and communities.

The Government is hopeful that this submission will support the Yoorrook Justice Commission's inquiry. The Government looks forward to the Commission's recommendations. The Government is hopeful that, in supporting the Commission's work, this submission goes some way in assisting the truth-telling process and healing the relationship with First Peoples.



## Language statement

The terms '**First Peoples**' and '**Aboriginal**' are used throughout this submission to refer to Traditional Owners of Country as well as all people of Aboriginal and Torres Strait Islander descent who are living, or have lived, in Victoria.

The terms '**Victoria**', the '**State**', and '**State of Victoria**', are used to refer to the legal entity exercising government power over the lands now known as Victoria from the beginning of colonisation to the present day, including the District of Port Phillip, the Colony of Victoria and the State of Victoria.

'**Victorian Government**' and '**the Government**' refer to the current Victorian Government. Unless otherwise specified, all legislation referred to is Victorian legislation.

'**Self-determination**' has multiple meanings for First Peoples. The United Nations Declaration on the Rights of Indigenous Peoples describes self-determination as the ability for Indigenous peoples to freely determine their political status and pursue their economic, social and cultural development. It also describes self-determination as a right that relates to groups of people, not individuals.

'**Systemic racism**' or '**institutional racism**' are widely used terms to describe racial discrimination (both direct and indirect) that extends beyond individual, isolated incidents to include broader patterns of inequality. Submissions on behalf of Tanya Day's family in the coronial inquest into her death in police custody define systemic racism as, 'a process that produces statistically discriminatory outcomes for particular racial or cultural groups. It may involve unconscious bias, or laws, policies, and practices, that operate to produce such outcomes. That outcome may occur without conscious racist intent ... without any individual displaying expressly racist or discriminatory behaviour and without institutional policies or practices that are expressly or openly racist.'<sup>1</sup>

'**Criminal justice system**' refers to the processes, institutions and laws associated with the defining, monitoring and enforcement of rules, for which a breach attracts a sanction (financial, custodial or community-based punishment), or intended therapeutic or rehabilitative intervention by the State. Victoria's criminal justice system includes the adult and youth justice systems, and involves the legislative, judicial and executive arms of government. It involves a wide range of activities, including policy making and law reform, policing, courts and tribunals, dispute resolution, supervision, penalties and fines, prisons, corrections services and parole, legal assistance and victim and witness support.

---

<sup>1</sup> Coroners Court of Victoria, *Inquest into the death of Tanya Louise Day* (Court reference: COR2017 6424) (Melbourne: 2020), 19-20, <https://www.coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>.

## Part 1: Introduction

1. Since establishing the Yoorrook Justice Commission (Commission) in partnership with the First Peoples' Assembly of Victoria (Assembly), the Victorian Government has remained deeply committed to the truth-telling objectives of the Commission. The Government welcomes the opportunity to contribute to the Commission's work by responding to its call for submissions on systemic injustice in the criminal justice system.
2. The Commission's inquiry into this system is a critical step in Victoria's journey towards understanding and accepting our collective history – including the State's role within that – and the truth of First Peoples' experiences.
3. The majority of Victorian First Peoples have no direct involvement with the criminal justice system, but many have been adversely affected by ongoing injustices.
4. Despite the impacts of colonisation and the continuing harm experienced within the criminal justice system, First Peoples have demonstrated powerful resilience and, in many instances, thrived – particularly when able to determine their own course. This submission is not intended to detract from this fact.
5. This submission is provided in accordance with the Government's commitment to truth-telling and engaging with the Commission transparently and in good faith. It offers a government perspective on systemic injustice in the criminal justice system including acknowledgment of the disproportionate impact on First Peoples to inform the Commission's work. This submission does not seek to elevate this perspective over First Peoples' views and experiences.
6. Part 2 of this submission acknowledges the historical context of the criminal justice system and provides examples of past wrongs. It further accepts that the Government is responsible for addressing systemic injustices.
7. Part 3 of the submission outlines key efforts that the Government has made to address systemic injustice in the criminal system. This includes a discussion of the Government's commitment to self-determination. It reflects on key reforms and programs in partnership with the Aboriginal community and aims to provide an honest appraisal of the outcomes of these efforts.
8. Part 4 of the submission expresses the Government's commitment to do more and identifies some key areas for the Commission's consideration.
9. Part 5 concludes that the Government has become increasingly aware, through long-standing Aboriginal community advocacy, that overcoming systemic injustice may not be possible through incremental reform to existing systems. Rather, the Government will endeavour for more transformative change that advances self-determination and will be guided by the Commission and informed by Treaty outcomes.



## Part 2: The State's responsibility for systemic injustice

### 2.1 Contemporary systems have their roots in colonisation

10. Colonisation was predicated upon the indefensible ideology that First Peoples were less civilised, less human, and less deserving than white people.<sup>2</sup> This ideology, coupled with the agenda of land acquisition, led to the creation of a suite of laws, policies and practices that enabled and justified the colonial project.<sup>3</sup>
11. The historical criminal justice system – which included a shared agenda of denying, assimilating, dispossessing, othering and oppressing First Peoples – was created and imposed to, among other objectives, control First Peoples and their Country.
12. The below is a summary demonstrating the link between systemic injustices in the historic and contemporary criminal justice systems.

#### ***The early removal of First Peoples children***

13. Since European occupation of Victoria in the 1830s, legislation sought to dispossess First Peoples through segregation and assimilation.<sup>4</sup> A complex set of laws, underpinned by racist belief systems, enabled the creation of the Stolen Generations.<sup>5</sup> This included a suite of 'protectionist' Acts under which 'Indigenous people were subject to near-total control.'<sup>6</sup> The Australian Human Rights Commission's *Bringing them home* report found that, '[w]hen a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide.'<sup>7</sup>

<sup>2</sup> Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *National Report* (Canberra: Australian Government, 1992), Volume 1, 1.4.8-1.4.9, <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

<sup>3</sup> RCIADIC *National Report*, Volume 1, 1.4.9 and 1.4.12.

<sup>4</sup> Australian Human Rights Commission (AHRC), *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander Children from their Families* (Canberra: Australian Government, 1997), 50 – 58, [https://humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>5</sup> As well as 'protectionist' legislation, this included the *Neglected and Criminal Children Act 1864* and the *Adoption Act 1928*.

<sup>6</sup> AHRC, *Bringing them home*, 23. Acknowledged in The Hon. Gabrielle Williams MP, Witness Statement to the Yoorrook Justice Commission, 3 May 2022, 9, [73].

<sup>7</sup> AHRC, *Bringing them home*, 190. In addition, at page 239, the AHRC found that the policy of forcible removal of Aboriginal children was, from 1946, in breach of binding international law prohibiting genocide. [https://humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf). Other historians and researchers have recognised aspects of colonisation in Australia as amounting to genocide: Thomas Rogers and Stephen Bain, "Genocide and frontier violence in Australia," *Journal of Genocide Research* 18, 1 (2016): 83-100; John Docker, "A plethora of intentions: genocide, settler colonialism and historical consciousness in Australia and Britain," *The International Journal of Human Rights* 19, 1 (2015); and Lyndall Ryan et al., "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, 2017-2022, <https://c21ch.newcastle.edu.au/colonialmassacres/introduction.php#genocide>. The Government notes that pursuant to its Letters Patent the Commission is also empowered to inquire into genocide that may have perpetrated by both State and non-State entities in Victoria.



14. In 1860, a Parliamentary Select Committee handed down a report recommending the creation of reserves and a central board for the protection of Aboriginal people.<sup>8</sup> The subsequently established board advocated for the introduction of the *Aboriginal Protection Act 1869* (1869 Act), which bestowed the Governor of Victoria with the power to introduce regulations relating to First Peoples.<sup>9</sup>
15. The 1869 Act was the first colonial law to establish a comprehensive system of government control and administration of First Peoples on the continent.<sup>10</sup> This extraordinarily powerful law marked the beginning of legislating racialised control, enabling regulations that circumscribed many aspects of First Peoples' lives.
16. The 1869 Act allowed for regulations regarding 'the care, custody and education of the children of aborigines',<sup>11</sup> and several regulations under the legislation allowed for the forced removal of First Peoples children from their families.<sup>12</sup> The 1869 Act also empowered the Governor to make regulations about where First Peoples lived and whether they could earn money.<sup>13</sup> This strengthened the State's ability to force First Peoples into poverty and onto newly established missions and reserves, preventing their participation in the colonial economy and allowing the allocation of stolen land to colonial pastoralists.
17. The Government acknowledges that this early legislation – informed by the racist ideology that white Europeans were superior to First Peoples – brought about many of the intergenerational circumstances, such as disconnection from identity, Country and culture, poverty and housing stress, that contribute to bringing First Peoples into contact with, and under the scrutiny of the criminal justice system.
18. Subsequent iterations of the protectionist legislation more overtly embedded the practice of removing children from their families. Colonial governments – operating under the racist assumption that the lives of people of mixed descent would be improved by casting off their Aboriginal identity – sought to assimilate First Peoples, including by forcibly removing children, into the European society and workforce.<sup>14</sup> While the term 'assimilation' was not expressly used in State policy until later in the 20th century, both the *Aborigines Protection Act 1886* (1886 Act) and *Aborigines Act 1928* (1928 Act) reveal this shift towards assimilationist goals.
19. The removal of children was often facilitated under protectionist legislation, rather than child welfare legislation, so that State officials could avoid having to prove neglect before a court to

<sup>8</sup> Victorian Select Committee upon Protection to the Aborigines, *Proceedings of Committee, Friday 9<sup>th</sup> March 1860* (Melbourne: Parliament of Victoria, 1860), <https://nla.gov.au/nla.obj-726882702/view?partId=nla.obj-726885911#page/n2/mode/1up>.

<sup>9</sup> *Aboriginal Protection Act 1869*, s. 2.

<sup>10</sup> Leigh Boucher, "The 1869 Aborigines Protection Act: Vernacular ethnography and the governance of Aboriginal subjects," in *Settler Colonial Governance in Nineteenth-Century Victoria*, eds. Leigh Boucher and Lynette Russell (Canberra: ANU Press, 2015), 66.

<sup>11</sup> *Aboriginal Protection Act 1869*, s. 2.

<sup>12</sup> AHRC, *Bringing them home*, 51.

<sup>13</sup> *Aboriginal Protection Act 1869*, s. 2.

<sup>14</sup> AHRC, *Bringing them home*, 24.

- justify their actions.<sup>15</sup> The 1886 Act allowed for specific regulations for people of mixed descent, under which many children were removed from their families.<sup>16</sup> A 1957 government report on the operation of the 1928 Act provides evidence of the intent to assimilate First Peoples, declaring that the ‘only ultimate solution of the “aboriginal problem”, as it now exists in this State, lies in the social, cultural and economic integration of the remainder of the race into the general community.’<sup>17</sup>
20. The *Aborigines Act 1957* (1957 Act) established the Aborigines Welfare Board with an openly assimilationist objective,<sup>18</sup> as the ‘policy of segregating full descent people ... and dispersing those of mixed descent had failed.’<sup>19</sup> Although the Board had no power to remove Aboriginal children from their families, under child welfare laws it could initiate forced removal by notifying police where there were welfare concerns about particular children, thus enabling the continuation of Stolen Generation practices.<sup>20</sup>
  21. This legislative and regulatory trajectory enabled State authorities to forcibly remove multiple generations of First Peoples children from their families, leading to irreparable intergenerational trauma. The *Bringing them home* report found that from 1910 to 1970, ‘between one in three and one in ten Indigenous children were forcibly removed from their families and communities’ across Australia.<sup>21</sup>
  22. For more than 100 years segregation and assimilation policies were used to intentionally remove Aboriginal children from their families under the guise of protection.
  23. It was not until the late 1960s that public policy began to change from assimilation to acceptance that Aboriginal children should remain with their families, coinciding with the 1968 abolition of the Aborigines Welfare Board and establishment of the Ministry of Aboriginal Affairs.<sup>22</sup> The Victorian Aboriginal Child Care Agency (VACCA) was established in 1976 in response to First Peoples’ concerns that Aboriginal children continued to be removed from their families and placed with non-Aboriginal carers.<sup>23</sup> In 2005, the Aboriginal Child Placement Principle was incorporated into legislation.<sup>24</sup>

<sup>15</sup> AHRC, *Bringing them home*, 25.

<sup>16</sup> *Aborigines Protection Act 1886*, ss. 3, 6-8; AHRC, *Bringing them home*, 51.

<sup>17</sup> Victorian Government, *Report upon the operation of the Aborigines Act 1928 and the regulations and orders made thereunder* (Melbourne: Victorian Government, 1957), 4,

[https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/25458.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/25458.pdf).

<sup>18</sup> *Aborigines Act 1957*, s. 6.

<sup>19</sup> AHRC, *Bringing them home*, 53.

<sup>20</sup> AHRC, *Bringing them home*, 54.

<sup>21</sup> AHRC, *Bringing them home*, 31.

<sup>22</sup> AHRC, *Bringing them home*, 58; Victorian Aboriginal Child Care Agency (VACCA), *Working with Aboriginal Children and Families: A Guide for Child Protection and Child and Family Welfare Workers* (Melbourne: VACCA, 2006), 13, [https://www.childabuseroyalcommission.gov.au/sites/default/files/VAC\\_0001\\_003\\_0454.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/VAC_0001_003_0454.pdf); also see Public Record Office Victoria’s page on Aboriginal Affairs at <https://prov.vic.gov.au/archive/VF175>.

<sup>23</sup> VACCA, “Aboriginal Child Placement Principle”, Victorian Aboriginal Child Care Agency, <https://www.vacca.org/page/about/aboriginal-child-placement-principle>

<sup>24</sup> The Aboriginal Child Placement Principle (ACPP) states that as a priority, wherever possible, Aboriginal children (as the first option) are to be placed within the Aboriginal extended family or relatives and where this is not possible with other extended family or relatives. The ACPP then has a series of cascading options in order of preference with the last



### **The early imposition of the criminal justice system**

24. British law was forced onto First Peoples as ‘British subjects’, denying and oppressing First Peoples’ pre-existing Lore, Law and systems of government, and outright rejecting Aboriginal sovereignty. This was a consequence of the application of the doctrine of *terra nullius*, which was premised on the racist notion that Aboriginal societies were ‘barbarous’ and therefore not worthy of legal recognition.<sup>25</sup>
25. This ideology of racial superiority justified the imposition of colonial law, which favoured settlers over First Peoples.<sup>26</sup> Rather than protecting First Peoples, the early criminal justice system was used to criminalise and incarcerate First Peoples, and to legitimise violence as a response to First Peoples’ resistance against settler incursions onto their Countries.<sup>27</sup>
26. First Peoples were over-represented in the colonial justice system from its beginning. In 1840, eleven of the twenty-six people recorded as being in custody were First Peoples.<sup>28</sup> Of the six people hanged by authorities in the Port Philip Colony in 1842, three were First Peoples.<sup>29</sup>
27. Colonial police played a key role in the imposition of the legal system and oppression of First Peoples – criminalising their ways of life, and enforcing segregation, dispossession and erasure of cultural practices.<sup>30</sup> As the colonial frontier expanded and settlers moved onto First Peoples’ lands, the key function of colonial police when conflict arose was ‘primarily to protect white settlers’.<sup>31</sup> Punitive expeditions to find and remove First Peoples resisting dispossession also occurred.<sup>32</sup>
28. Police roles extended beyond the criminal justice system, however, as they were also designated as the enforcers of the protectionist legislation and regulations examined above.<sup>33</sup>

resort being placement with a non-Aboriginal family living in close proximity to the child’s family, section 13(2) of the *Children, Youth and Families Act 2005*.

<sup>25</sup> *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 [39], <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>.

<sup>26</sup> Barry Batton, “Unequal Justice: Colonial Law and the Shooting of Jim Crow,” *Provenance: The Journal of Public Record Office Victoria*, 5 (2006): <https://prov.vic.gov.au/explore-collection/provenance-journal/provenance-2006/unequal-justice>.

<sup>27</sup> See, broadly, Chris Cunneen and Amanda Porter, “Indigenous Peoples and Criminal Justice in Australia,” in *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*, eds Antje Deckert and Rick Sarre (Basingstoke: Palgrave Macmillan, 2017), 667-682; Amanda Nettelbeck and Lyndall Ryan, “Salutary Lessons: Native Police and the ‘civilising’ role of legalised violence in colonial Australia,” *Journal of Imperial and Commonwealth History* 46, 1 (2018): 47-68.

<sup>28</sup> Clare Land, *Tunmerinnerwait and Maulboyheenner: The involvement of people from Tasmania in key events of early Melbourne* (Melbourne: City of Melbourne, 2014), 14, <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/tunmerinnerwait-and-maulboyheenner.pdf>.

<sup>29</sup> Land, *Tunmerinnerwait and Maulboyheenner: The involvement of people from Tasmania in key events of early Melbourne*, 15.

<sup>30</sup> RCIADIC, *National Report*, Volume 2, 10.5.6; Larissa Behrendt, Chris Cunneen, and Terri Libesman, *Indigenous Legal Relations in Australia* (Melbourne: Oxford University Press, 2009).

<sup>31</sup> Charles Dunford Rowley, *The Destruction of Aboriginal Society: Aboriginal policy and practice – Volume 1* (Canberra: Australian National University Press, 1970), 153.

<sup>32</sup> Rowley, *The Destruction of Aboriginal Society*, 39, 155; Hal Wootten, “Aborigines and Police,” *University of New South Wales Law Journal* 16, 1 (1993): 265-301; RCIADIC *National Report*, Volume 2, 10.3.19.

<sup>33</sup> Wootten, “Aborigines and Police”; Australian Law Reform Commission (ALRC), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (Report 133)* (Canberra: Australian Government, 2017), 59, [https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf).



Police often held the roles of local guardians and 'protectors' of Aboriginal communities – they policed behaviour, controlled access to rations, conducted population surveys, and were granted welfare powers to remove children.<sup>34</sup> The significant historic roles of police in Aboriginal lives established an early pattern of frequent contact.

29. Courts were also sites of oppression for First Peoples, interpreting and applying laws in discriminatory ways. First Peoples were considered incompetent to give evidence due to racist notions that they were unable to perceive the moral consequences of giving false testimony or swear an appropriate religious oath.<sup>35</sup> First Peoples were excluded from juries,<sup>36</sup> preventing them from being judged by their peers. It was common for courts to issue warrants (which authorised the colonial police to use lethal force if required) for the arrest of First Peoples for minor offences that would usually, for non-Aboriginal people, be dealt with through a summons to appear.<sup>37</sup> The doctrine of *terra nullius* meant the legal system would not recognise land as stolen, preventing First Peoples from making any claims for compensation.
30. By 1848, five Aboriginal people from Port Phillip had been hanged (three for bushranging and two for killing a white settler), while nine Europeans were tried for killing Aboriginal people, with only one convicted (and sentenced to just two months imprisonment).<sup>38</sup> As actors of a foreign law, operating with foreign norms and in a foreign language, and underpinned by racist ideas of inferiority, immorality and incompetency, courts did not and could not ensure First Peoples had equitable access to justice.
31. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that First Peoples perceived courts to be hostile to their interests, intimidating and culturally insensitive,<sup>39</sup> and courts continue to be inaccessible or alienating for First Peoples.<sup>40</sup> The Koori Court, discussed below, was established in 2002 in recognition of this, to improve First Peoples'

<sup>34</sup> See, for example, police powers and responsibilities discussed in: Victorian Government, *Seventh report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: 1871), [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/24630.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24630.pdf); Victorian Government, *Twenty-eighth report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: 1892), 4; Victorian Government, *Report upon the operation of the Aborigines Act 1928 and the regulations and orders made thereunder* (Melbourne: 1956–57), 4-6; AHRC, *Bringing them home*, 52-4.

<sup>35</sup> ALRC, *Recognition of Aboriginal Customary Laws (Report 31)* (Canberra: Australian Government, 1986), 33-34; Russell Smandych, "Contemplating the testimony of 'others': James Stephen, the Colonial Office, and the fate of Australian Aboriginal evidence acts, circa 1839-1849," *Australian Journal of Legal History* 11 (2004): <http://classic.austlii.edu.au/au/journals/AJLH/2004/11.html/>.

<sup>36</sup> Susan Davies, "Aborigines, murder and the criminal law in early Port Phillip, 1841/1851," *Historical Studies* 22, 88 (1987): <https://doi.org/10.1080/10314618708595754>.

<sup>37</sup> Batton, "Unequal Justice: Colonial Law and the Shooting of Jim Crow."

<sup>38</sup> This total includes the three hanged in 1842 mentioned above, Land, *Tunnerminnerwait and Maulboyheenner: The involvement of people from Tasmania in key events of early Melbourne*, 15.

<sup>39</sup> RCIADIC, *National Report*, Volume 3, 22.4. See also: Sentencing Advisory Council, *Sentencing in the Koori Court Division of the Magistrates' Court: A Statistical Report* (Melbourne: 2010), 6,

[https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentencing\\_in\\_the\\_Koori\\_Court\\_Division\\_of\\_the\\_Magistrates\\_Court.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentencing_in_the_Koori_Court_Division_of_the_Magistrates_Court.pdf).

<sup>40</sup> ALRC, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (Report 133)*.

community participation in the sentencing process<sup>41</sup> and provide a more culturally safe criminal justice process.<sup>42</sup>

32. The unequal treatment of First Peoples under colonial laws, and the assumptions of racial superiority that underpinned colonisation, also contributed to First Peoples' overrepresentation in the criminal justice system. For example, the enforced poverty of First Peoples was criminalised through various offences, including theft, larceny, and vagrancy.<sup>43</sup> This criminalisation, and forced congregation onto the small amount of land left for First Peoples by European settlers, further contributed to over-policing and the increased possibility of violent encounters with State officials. Recent academic research found that half of all recorded frontier massacres of First Peoples across Australia involved police and other 'agents of the state'.<sup>44</sup>
33. British law – and the police and court officials who enforced it – was a key tool of colonisation and dispossession, creating a very particular and enduring oppressive relationship between First Peoples and the criminal justice system.
34. The impacts of discrimination, criminalisation of poverty, and racism that existed under the colonial legal system persist, leading to Aboriginal people in Australia being one of the most imprisoned groups of people in the world.<sup>45</sup>

## 2.2 The State is responsible for addressing systemic injustice

35. Over-representation of First Peoples in the contemporary criminal justice system is a product of serious systemic injustice, of which the State acknowledges.
36. The State's dispossession, criminalisation and dehumanisation of First Peoples, the removal of their children, and denial of Law, Lore and culture, created the conditions for the intergenerational trauma and social and economic inequality experienced today.

<sup>41</sup> Explanatory Memorandum, Magistrates' Court (Koori Court) Bill 2002, 1128-1129; Victorian Government, *Whole of Victoria Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System* (Melbourne: 2021), 108,

[https://new.parliament.vic.gov.au/4ae1cc/contentassets/ff275e1a441e458db80e4959d74af23d/submission-documents/093.-victorian-government\\_redacted.pdf](https://new.parliament.vic.gov.au/4ae1cc/contentassets/ff275e1a441e458db80e4959d74af23d/submission-documents/093.-victorian-government_redacted.pdf).

<sup>42</sup> Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System* (Melbourne: Parliament of Victoria, 2022), 523 (Finding 47),

<https://new.parliament.vic.gov.au/4ae181/contentassets/6961bccea1ac41dd812811ab0312170d/lcslc-59-10-vic-criminal-justice-system.pdf>.

<sup>43</sup> See, broadly, Julie Kimber, "Poor Laws: A Historiography of Vagrancy in Australia," *History Compass* 11, 8 (2013): 537-550, <https://doi.org/10.1111/hic3.12052>.

<sup>44</sup> Lyndall Ryan et al., "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, 2017-2022, <https://c21ch.newcastle.edu.au/colonialmassacres/statistics.php>.

<sup>45</sup> Thalia Anthony, 'Fact check: are First Australians the most imprisoned people on earth?' *The Conversation*, 6 June 2017, <https://theconversation.com/factcheck-are-first-australians-the-most-imprisoned-people-on-earth-78528>.



37. It is the interplay between systemic racism and this cycle – created in the first instance to support a colonial project based on an ideology of racial superiority, that is a primary cause of First Peoples in Victoria being over-represented in all areas of the criminal justice system.<sup>46</sup>
38. Other factors that contribute to over-representation include barriers to participation in early childhood education and care; poor mental health and health inequities; unemployment and workplace discrimination; homelessness and lack of access to housing; financial stress; family violence; substance misuse and lack of access to appropriate care.
39. The Government recognises that entry into the cycle of the criminal justice system upends lives and causes profound harm to the individuals involved and their families and communities, including contributing to high rates of suicide among First Peoples.<sup>47</sup> Involvement in the criminal justice system damages families, perpetuates social and economic exclusion, compounds intergenerational trauma and poor health, and can break connections to Country, culture, and community.<sup>48</sup>
40. The Government acknowledges that threads of colonial racism – although reprehensible – persist to this day, existing consciously and unconsciously in individuals, services, laws and policies. This is apparent primarily through First Peoples’ accounts of ongoing experiences of direct, indirect and systemic racism, and secondary to that, through data that continues to show profound inequality in outcomes.
41. The Government acknowledges the terrible pain, sorrow and anger that deaths in custody and custody-related operations cause to families and the broader Aboriginal community. There have been 22 Aboriginal deaths in prison and 10 Aboriginal deaths in police custody and custody related operations in Victoria since the RCIADIC released its final report in 1991.<sup>49</sup> The RCIADIC found that over-representation of First Peoples in the criminal justice system is the primary driver of First Peoples deaths in custody.<sup>50</sup>

<sup>46</sup> See Department of Premier and Cabinet (DPC), *Victorian Government Aboriginal Affairs Report (VGAAR) 2021* (Melbourne: State Government of Victoria, 2021), 98-109, <https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>

<sup>47</sup> Coroners Koori Engagement Unit and Coroners Prevention Unit, *Suicides of Aboriginal and Torres Strait Islander People, Victoria 2018–21* (Melbourne: Coroners Courts of Victoria, 2022), 8, 10, <https://www.coronerscourt.vic.gov.au/sites/default/files/2022-01/Victorian%20suicides%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20people%20-%20Victoria%20-%202018-2021%20-%2020Jan2022.pdf>. This report found that First Peoples died by suicide at a rate nearly three and a half times higher than non-Indigenous people. The stressors are complex but include engagement with the police and justice system proximal to passing. See also Commission for Children and Young People (CCYP), *Lost, not forgotten, Inquiry into children who died by suicide and were known to Child Protection* (Melbourne: 2019), 14, <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-Lost-not-forgotten-web-final.PDF>, which highlighted that those Aboriginal children and young people who have contact with the Child Protection system are at a higher risk of passing by suicide.

<sup>48</sup> The Hon. Gabrielle Williams MP, Witness Statement to the Yoorrook Justice Commission, 3 May 2022, 11, [83]; PwC’s Indigenous Consulting, *Indigenous Incarceration: Unlock the facts* (2017), 5, <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

<sup>49</sup> Corrections Victoria data shows that between 1991 and November 2022, there have been a total of 303 deaths in Victoria’s custodial system (Corrections Victoria). Just over 7 per cent of these were Aboriginal deaths (22 deaths in total). There has been a further 10 Aboriginal deaths in Victoria Police custody. At present there is no single source of information related to the number of Aboriginal deaths in custody in Victoria. Rather, statistics pertaining to deaths in custody rely on the triangulation of several sources. The Australian Institute of Criminology reports annually on deaths in police custody and custody-related operations and deaths in prison using data collected from DJCS and Victoria Police.

<sup>50</sup> RCIADIC, *National Report*, Volume 1, 1.3.3.



42. Despite Government reform efforts, often in partnership with First Peoples, over-representation of First Peoples in the criminal justice system has largely continued to worsen. Current practice is to consult or partner with First Peoples regarding criminal justice reforms, which has led to the implementation of a range of positive programs and initiatives. Nonetheless, this approach has not delivered enduring outcomes, as First Peoples continue to be over-represented. There is still much work to be done.
43. The Government accepts that it has an important role to play in addressing systemic racism and unconscious bias. The Government accepts that in addition to continued reforms, that changes to cultural attitudes about First Peoples are also needed. However, one of the reasons that racism is so harmful is that it is often invisible to, and therefore denied by, those who do not experience it. The Government looks to the Commission for recommendations for addressing systemic injustices in all its forms, including matters for further negotiation through the Treaty process.
44. The Government recognises that change is needed, and that change should be determined and developed by First Peoples. The fundamental importance of self-determination underpins the Government's commitment to Treaty.

### Part 3: The Victorian Government's response

45. This section seeks to assist the Commission's current lines of inquiry by outlining key whole of Victorian Government self-determination reform commitments and criminal justice system reforms that have sought to address injustices outlined in the Commission's Issues Paper. This section also provides a transparent account of the outcomes of those reforms, demonstrating that despite attempts, over-representation prevails.
46. Through the National Agreement on Closing the Gap (National Agreement) and Victorian agreements and frameworks, the Government has committed to eliminate the over-representation of First Peoples in the criminal justice system, and to ensure that any contact that First Peoples have with criminal justice institutions is culturally safe.<sup>51</sup>
47. The Victorian Government's Stolen Generations Reparations Package has begun a process of State redress for historical child removal practices,<sup>52</sup> and Aboriginal controlled community organisations (ACCOs) are playing an increasingly important role in contemporary justice-sector service delivery.

<sup>51</sup> National Agreement targets 10, 11 and 12. Department of Health (DH), *Korin Korin Balit-Djak: Aboriginal health, wellbeing and safety strategic plan 2017-2027* (Melbourne: Victorian Government) priority focus' 2.1, 3.1 and 4.2, <https://www.health.vic.gov.au/health-strategies/korin-korin-balit-djak-aboriginal-health-wellbeing-and-safety-strategic-plan-2017>; Department of Families, Fairness and Housing (DFFH), *Wungurilwil Gaggapduir Aboriginal Children and Families Agreement 2018*, (Melbourne: Victorian Government, 2018), 8, <https://www.dffh.vic.gov.au/sites/default/files/documents/202201/Wungurilwil%20Gaggapduir%20Aboriginal%20Children%20and%20Families%20Agreement%202018.pdf>; DJCS, *Burra Lotjpa Dungaludja – Victorian Aboriginal Justice Agreement Phase 4* (Melbourne: Victorian Government, 2021), Goal 3.1.

<sup>52</sup> At 13 January 2023, 218 full Reparations payments had been made by DJCS (Source: Internal DJCS data).

48. While there have been improvements in National Agreement education and health outcomes for First Peoples as well as reducing Aboriginal children and young people's involvement in the youth justice system, over-representation in the adult criminal justice systems has worsened.<sup>53</sup> This is despite the important work of Aboriginal partnership forums, legislative changes and various Victorian Government policy frameworks and agreements made in partnership with the Aboriginal community controlled sector. Some of this work is outlined in further detail below.
49. Lack of progress is not the fault of individuals working for better outcomes within or adjacent to these systems. Rather, it reflects the need to move away from a reform approach focusing on incremental change to existing systems, to one characterised by transformation through self-determination and Treaty.

### 3.1 The Government's commitment to self-determination

#### *Victorian Aboriginal Affairs Framework (VAAF)*

50. Self-determination is the guiding principle of the Government's approach to Aboriginal affairs, as outlined in the VAAF.<sup>54</sup> First Peoples' right to self-determination is also recognised in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* and is a core principle underpinning Victoria's Treaty process.<sup>55</sup>
51. In preparing the VAAF, the Government heard from First Peoples that genuine reform of systems and institutions, to address systemic injustice and improve outcomes for First Peoples, can only happen through First Peoples-led processes.<sup>56</sup> Action on self-determination is part of a continuum of change towards Treaty and full decision-making and resource control (see Figure 1).<sup>57</sup>

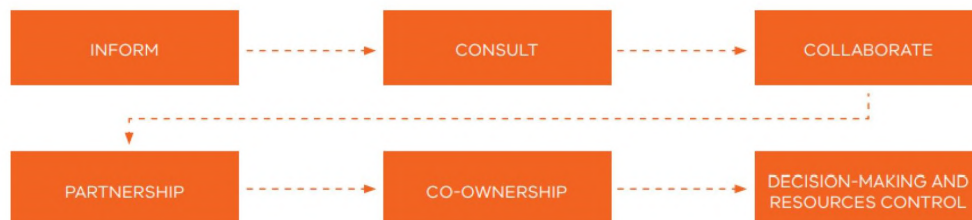


Figure 1: Continuum towards Aboriginal self-determination. Victorian Aboriginal Affairs Framework 2018–23.

52. The Government reports annually against the VAAF and its progress along this continuum, with updates included in the Victorian Government Aboriginal Affairs Report. The VAAF holds government to more ambitious targets than Victoria's commitments under the National

<sup>53</sup> Save for an improvement as a result of the response to COVID-19, overall trends since 2009 have been upwards.

<sup>54</sup> DPC, *Victorian Aboriginal Affairs Framework (VAAF) 2018–2023*, (Melbourne: Victorian Government, 2018), 22, <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>.

<sup>55</sup> *Advancing the Treaty Process with Aboriginal Victorians Act 2018*, s. 22.

<sup>56</sup> DPC, *VAAF 2018–2023*, 22.

<sup>57</sup> DPC, *VAAF 2018–2023*, 23.



Agreement, including Goal 15: ‘Aboriginal over-representation in the justice system is eliminated.’<sup>58</sup>

### ***Treaty – reflecting self-determination in practice***

53. The fundamental importance of and respect for self-determination underpins the Government’s commitment to Treaty. Treaty in and of itself is not the end goal – it is the legal framework through which Aboriginal self-determination can be realised.
54. Treaty rejects the fallacy of *terra nullius* and empowers First Peoples to come together and negotiate with the State changes that they consider necessary to further self-determination and wellbeing. Treaty, by its very nature, empowers First Peoples to come together as political, self-determining entities to negotiate with the State on an equal footing.
55. The Government endorses the representative role of the Assembly and recognises the significance of the Assembly’s electoral and representative structure for all First Peoples in Victoria. The Government is mindful of the State’s legal obligation to be ready to negotiate across the Treaty subject matter outlined in the Treaty Negotiation Framework, which includes criminal justice system issues.
56. Statewide Treaty allows for the negotiation of an ongoing, First Peoples’ representative decision-making body for all Aboriginal Victorians.<sup>59</sup> As stated by the Assembly in its submission to the Commission, Treaty is a process that has the potential to bring about structural reform and transformation.<sup>60</sup> The Government has existing commitments to transfer decision-making power and resources to First Peoples, including under the VAAF. Treaty provides a pathway to further the commitment to self-determination and it is within this context of First Peoples-led ambitions that the Government is seeking to be guided by the Commission’s recommendations.

## **3.2 Criminal justice system reforms**

57. The Government has been working in partnership with First Peoples to improve justice outcomes for First Peoples, but acknowledges that the significant over-representation of First Peoples in the criminal justice system requires a distinct response to prevent First Peoples’ entry and re-entry to the system.
58. While acknowledging that more work is required, Victoria Police has also taken steps to attempt to improve cultural safety and earn First Peoples’ trust. This includes growth of the Aboriginal Community Liaison Officer and Police Aboriginal Liaison Officer programs, mandatory Aboriginal Cultural Awareness Training, the ongoing development of a self-

<sup>58</sup> DPC, VAAF 2018–2023, 49.

<sup>59</sup> First Peoples Assembly of Victoria and the State of Victoria, Treaty Negotiation Framework, 2022, cl. 25.3(b).

<sup>60</sup> First Peoples’ Assembly of Victoria, Submission to the Yoorrook Justice Commission, 5 December 2022, 13, <https://www.firstpeoplesvic.org/wp-content/uploads/2022/12/Assembly-Submission-to-Yoorrook-Issues-December-2022-.pdf>; First Peoples’ Assembly of Victoria and the State of Victoria, Treaty Negotiation Framework, 2022, cl. 3.3 (b): ‘a Statewide Treaty will support First Peoples as a collective to exercise self-determination, including, if agreed, by structural reform to government in Victoria’.

determination framework and the Aboriginal Portfolio Reference Group. Victoria Police can provide further information about these, and other initiatives as requested.

### **The Victorian Aboriginal Justice Agreement (AJA)**

59. The AJA is a long-term partnership between the Victorian Government and the Aboriginal community. Commencing in 2000, the first phase of the AJA was developed in response to the 1991 RCIADIC Final Report and subsequent 1997 National Ministerial Summit on Indigenous Deaths in Custody.
60. *Burra Lotjpa Dunguludja* ('Senior Leaders Talking Strong' in Yorta Yorta language) is the fourth phase of the AJA and has led to the planning, implementation and monitoring of a broad range of justice initiatives and programs aimed at eliminating the over-representation of First Peoples in the justice system and ending Aboriginal deaths in custody.
61. One of the achievements of the AJA is that it provides an avenue for the Government to have regular and open dialogue with the First Peoples community. A key element of AJA governance is the Aboriginal Justice Caucus (AJC), which comprises First Peoples representatives from ACCOs, Aboriginal peak bodies and the nine Chairs of the Regional Aboriginal Justice Advisory Committees (RAJACs). The Government formally liaises with the AJC through the Aboriginal Justice Forum (AJF), which meets three times per year.<sup>61</sup> Through the AJF, the Government gains insights and understanding directly from First Peoples, while also providing a forum for First Peoples to hold Government to account.<sup>62</sup>

### **Case studies: Koori Courts**

The first Koori Court was established at the Shepparton Magistrates' Court in 2002 in response to the findings and recommendations of the RCIADIC. Since then, Koori Courts have been expanded to 15 Magistrates, 12 Childrens and 7 County Court locations. The Government is committed to exploring its further expansion under *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022–2032*.<sup>63</sup>

Koori Court is presided over by a Magistrate or Judge and involves an Aboriginal Elder or Respected Person to advise on cultural issues relating to the accused and to provide background information for possible reasons for the offending.<sup>64</sup> Elders or Respected Persons have an active role in the sentencing conversation, and while the Judge or Magistrate is the ultimate decision-maker, Aboriginal offenders are spoken to by Elders or Respected Persons about the ramifications of their behaviour.

An independent evaluation of the Magistrates' Koori Court in 2005 found that Aboriginal people before the Court had an emotional response to Elders and that 'shaming' often acted as a

<sup>61</sup> DJCS, *Evaluation of the Aboriginal Justice Agreement Phase 3: Summary of findings* (Melbourne: Victorian Government, 2021), <https://files.aboriginaljustice.vic.gov.au/2021-11/Summary-of-findings-from-AJA3-evaluation%20reports.PDF>.

<sup>62</sup> DJCS, *Evaluation of the Aboriginal Justice Agreement Phase 3: Summary of findings*.

<sup>63</sup> DJCS, *Wirkara Kulpa, Aboriginal Youth Justice Strategy 2022-2023* (Melbourne: Victorian Government, 2022), 43, <https://www.aboriginaljustice.vic.gov.au/wirkara-kulpa-aboriginal-youth-justice-strategy-2022-2032>

<sup>64</sup> DJCS, *Wirkara Kulpa, Aboriginal Youth Justice Strategy 2022-2023*, 43.



deterrent to reoffending.<sup>65</sup> A 2011 evaluation of County Koori Court found that it had resulted in reduced rates of reoffending and improved awareness of justice processes within Aboriginal communities.<sup>66</sup>

### Dardi Munwurro men’s healing programs

Dardi Munwurro is a specialist Aboriginal healing and family violence prevention service. It is funded under *Burra Lotjpa Dunguludja* to provide programs across Victoria to reduce Aboriginal boys’ and men’s contact with the criminal justice system. Dardi Munwurro provides residential healing camps for men and behavioural change programs in the community and in prisons. Dardi Munwurro’s Bramung Jaarn Program supports Aboriginal boys aged 10–17 years to transition to healthy adulthood and divert participants from the criminal justice system. An evaluation of Dardi Munwurro’s healing programs found that they help to address the drivers of contact with the criminal justice system including poor mental health and trauma, and reduce the likelihood of a program participant being incarcerated or subject to a court order.<sup>67</sup>

62. The case studies above are examples of initiatives under *Burra Lotjpa Dunguludja* and previous AJAs that involve Elders as the holders of cultural authority and ground healing in culture and, in doing so, reduce the risk of future justice system involvement.
63. Commitments under *Burra Lotjpa Dunguludja* include to consider amending the *Sentencing Act 1991* to consider Aboriginality in sentencing. A trial of pre-sentence ‘Aboriginal Community Justice Reports’ is currently underway to help judicial officers understand how an Aboriginal defendant’s life experience and history impacts their offending, and to identify more suitable sentencing arrangements to address these underlying factors.<sup>68</sup> Other successful programs, include the Wulgunggo Ngalu Learning Place for men on community corrections orders, the Koori Women’s Diversion Program and the Baroona Youth Healing Place.<sup>69</sup> The Department of Justice and Community Safety (DJCS) can provide further details on programs as requested.

### Youth Justice

64. In February 2022, the first Aboriginal Youth Justice Strategy in Victoria, *Wirkara Kulpa*, was launched. It envisions a future where Aboriginal children and young people are not in the

<sup>65</sup> Bridget McAsey, ‘A critical evaluation of the Koori Court Division of the Victorian Magistrates’ Court,’ *Deakin Law Review* 10, 2 (2005): 654-85, <https://ojs.deakin.edu.au/index.php/dlr/article/view/298>. McAsey discussed that shaming, or public discussion and negotiation, is a recognised traditional effective punishment based on the concept that “it is better to be shamed by one’s community than by the state.” (665).

<sup>66</sup> Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria’s Criminal Justice System*, 521.

<sup>67</sup> Deloitte, *Strengthening Spirit and Culture: A cost-benefit analysis of Dardi Munwurro’s men’s healing programs* (Melbourne: 2021), 1, <https://www.dardimunwurro.com.au/wp-content/uploads/2021/11/HF-Strengthening-Spirit-and-Culture-Dardi-Munwurro-Report-Oct2021-V5.pdf>.

<sup>68</sup> See VALS, “Aboriginal Community Justice Reports,” VALS, <https://www.vals.org.au/aboriginal-community-justice-reports/>. VALS is currently undertaking a trial of 20 pre-sentencing reports.

<sup>69</sup> A summary of *Burra Lotjpa Dunguludja* programs and commitments is available at DJCS, *Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4*, 39. Other corrections and custodial programs include: the Aboriginal Family Visits Program that provides financial assistance to families visiting First Peoples in custody; the Statewide Indigenous Arts in Prison and Community Program delivered by the Torch; and the Yawal Mugadjina, providing culturally tailored mentoring to support incarcerated First Peoples in their transition and reintegration back into communities.

youth justice system, because they are strong in their culture, connected to their families and communities, and living healthy, safe, resilient, thriving and culturally rich lives. *Wirkara Kulpa* was led by the AJC, under the umbrella of the AJA, and is a key initiative of *Burra Lotjpa Dungaludja* and the Youth Justice Strategic Plan 2020–2030. *Wirkara Kulpa* builds on the findings of the Koori Youth Justice Taskforce and addresses 56 recommendations of the Commission for Children and Young People’s (CCYP) *Our youth, our way* report.<sup>70</sup>

65. The Victorian Government has committed to introducing a new, standalone Youth Justice Bill, which is still under development, that will include measures to promote Aboriginal-led service delivery and divert children and young people away from the youth justice system.<sup>71</sup> The Youth Justice Bill will consider a range of reforms to help deliver more appropriate care for young people in custody.

### Case studies: Koori Youth Justice Taskforce

The Koori Youth Justice Taskforce was led by the Commission for Aboriginal Children and Young People in partnership with DJCS. It examined the cases of all Aboriginal children and young people in contact with Youth Justice programs (a total of 296 people) between October 2018 and March 2019. It involved a case file review, individual case planning sessions for 69 Aboriginal children and 13 regional forums with stakeholders.

The Koori Youth Justice Taskforce identified immediate and critical strengths-based actions needed for each Aboriginal child and young person, which were initiated by Aboriginal community members and each person’s care team.<sup>72</sup> The sessions also focused on how agencies and organisations could work together more effectively to meet the needs of each child or young person.<sup>73</sup>

The Taskforce and *Wirkara Kulpa* are among several youth justice related initiatives implemented under *Burra Lotjpa Dungaludja* which have correlated with a 30 per cent reduction in the number of Aboriginal children and young people aged 10–17 under youth justice supervision on an average day from 2018–19 to 2020–21.<sup>74</sup> DJCS is establishing Aboriginal Case Management Reviews (modelled on the Taskforce private sessions) as an action in *Wirkara Kulpa*.<sup>75</sup>

<sup>70</sup> CCYP, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in Victoria’s youth justice system* (Melbourne: CCYP, 2021), <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>.

<sup>71</sup> In response to a recommendation of the 2017 independent Youth Justice Review and Strategy the Victorian Government committed to introducing a new, standalone Youth Justice Act. See Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, 2017.

<sup>72</sup> A care team is the group of people who jointly look after a child while the child is in care. Care teams usually include the child’s parents, their carer, significant family members, their allocated child protection practitioner and professionals providing support to the child (disability support for example). A care team is required for every child in care, except for permanent care placements.

<sup>73</sup> CCYP, *Our youth, our way*, 20.

<sup>74</sup> Australian Government, “Youth Justice in Australia 2020-21: data table S10a,” AIHW, published 31 March 2022, <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2020-21/data>.

<sup>75</sup> As recommended in *Our youth, our way*, the Review Panels will bring together Aboriginal community members and government partners to address actions for First Peoples children and young people in contact with the youth justice system through tailored First Peoples-led strengths-based case planning.



## The Education Justice Initiative (EJI)

EJI is an information, referral and advocacy service that supports children and young people aged 10–17 involved with the criminal justice system to remain engaged or re-engage with education and/or training. Many children and young people involved in the criminal justice system have been either formally or informally excluded from schooling, which is a key risk factor in offending. The Government recognises that more needs to be done to prevent children being excluded from school.<sup>76</sup>

Delivered through the criminal division of the Children’s Court, the EJI has Koorie Education Liaison Officers at several court locations to support Aboriginal children and young people. Liaison Officers talk with children and young people about their educational interests and work with school and training providers – advocating on the child or the young person’s behalf to resolve education issues and facilitate enrolments. An evaluation across six EJI sites indicated that while Aboriginal young people make up 9 per cent of all young people appearing in court, approximately 25 per cent of EJI participants are Aboriginal. After six weeks, approximately 55 per cent of Aboriginal children and young people reported being engaged at an education or training setting and this rate increased to 70 per cent after three months.

66. Formal police cautioning, as an alternative to arrest, is one method for diverting Aboriginal children from the justice system. In 2020–21, 58.6 per cent of Aboriginal first-time alleged offenders aged 10–17 years received a caution from police.<sup>77</sup> This rate has fluctuated over the last five years between 63.2 per cent at its highest and 52 per cent at its lowest. The Government acknowledges that there needs to be a greater focus on increased cautioning, including through the Aboriginal Youth Cautioning Program.

## Case study: Aboriginal Youth Cautioning Program (AYCP)

Victoria Police delivers the AYCP in partnership with the Aboriginal community. The AYCP seeks to address the over-representation of Aboriginal children and young people in the criminal justice system through greater use of cautioning and diversion options, and through a community-led model.<sup>78</sup> Under the AYCP, Aboriginal children and young people issued with a caution can opt to meet with a panel of Aboriginal community leaders to discuss their support needs.

Initially trialled in partnership with local ACCOs in Bendigo, Echuca and Greater Dandenong, the AYCP has expanded to cover 20 local government areas. Victoria Police is working with Aboriginal communities to identify opportunities to expand the program to additional sites.<sup>79</sup>

<sup>76</sup> An investigation by the Victorian Ombudsman: *Investigation into Victorian government school expulsions*, 14 August 2017, found that of formal expulsions in 2016, “students in out of home care, students with disabilities and Aboriginal and Torres Strait Islander students are all over-represented in expulsion figures” (para 13). Although Aboriginal children made up less than 2% of students, they accounted for approximately 6% of 2016 expulsions. Changes were made in 2017 to suspension and expulsion guidelines for public schools to address this but the problem persists. In 2021, Aboriginal children made up less than 2.5% of students and accounted for 7% of expulsions.

<sup>77</sup> Victorian Government, “VGAAR 2021: data table 15.1.3,” First Peoples-State Relations (FPSR), modified 28 September 2022, <https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>.

<sup>78</sup> DJCS, *Burra Lotjpa Dungaludja – Victorian Aboriginal Justice Agreement Phase 4*, Goal 2.2.

<sup>79</sup> DPC, *VGAAR 2021*, 100.



The AYCP has resulted in an increase in the number of young Aboriginal people diverted from the courts and connected to support services. It also supported school attendance and engagement with Aboriginal cultural activities and community events alongside police.<sup>80</sup>

### ***Preventing the criminalisation of young people in care***

67. There is significant overlap between the child protection and youth justice systems, with a child's involvement in one system increasing their risk of involvement in the other.<sup>81</sup> The Australian Institute of Health and Welfare's latest report showed that 76 per cent of Aboriginal children and young people in the youth justice system in Victoria also had interactions with child protection (well above the national average of 62 per cent).<sup>82</sup>
68. In response, the Government has made a statewide commitment through the *Framework to reduce criminalisation of young people in residential care* to improve the quality of care and reduce their exposure to the criminal justice system.<sup>83</sup> The Framework contains guiding principles for signatory agencies which include recognising that, for Aboriginal young people, strengthening connection to culture and community and a trauma-informed approach to care are vital. The Framework also includes a decision-making guide for residential care providers designed to reduce police call-outs to residential homes and advice to Victoria Police on appropriate responses to incidents.
69. The Government recognises that there is still more to be done to prevent Aboriginal children who are involved in the child protection system from entering the youth justice system. The Government is committed to ongoing reform to address this through the implementation of existing strategies such as *Wirkara Kulpa*, criminal justice reforms and exploring options to better support children who would otherwise receive a criminal justice response.

## **3.3 Criminal justice outcomes**

### ***Ongoing over-representation across the criminal justice system***

70. Despite the reforms detailed above, poor (and in some case, worsening) outcomes persist for First Peoples. The number of First Peoples charged by police, held on remand, sentenced to custodial settings, and not released on parole, has steadily increased.<sup>84</sup>

<sup>80</sup> DPC, *VGAAR 2021*, 100.

<sup>81</sup> See CCYP, *Our youth, our way*, 46 (recommendation 35) which found that: '[m]ost Aboriginal children and young people under Youth Justice supervision have also experienced Child Protection involvement'. On 31 December 2019, 64 per cent of Aboriginal children and young people subject to Youth Justice supervision had a previous or current child protection order, compared with 37 per cent of non-Aboriginal children and young people involved in Youth Justice: see 21 and 81.

<sup>82</sup> AIHW, *Young people under youth justice supervision and their interaction with the child protection system 2020-2021* (Canberra: Australian Government, 2022), <https://www.aihw.gov.au/reports/youth-justice/young-people-under-youth-justice-supervision/summary>.

<sup>83</sup> DFFH, *Framework to reduce criminalisation of young people in residential care* (Melbourne: Victorian Government, 2020), <https://providers.dffh.vic.gov.au/framework-reduce-criminalisation-young-people-residential-care>

<sup>84</sup> Increases over the last ten years are demonstrated in: Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system*, 61-62.

71. At the time of the RCIADIC, Aboriginal adults in Victoria were in custody at a rate 13 times greater than non-Aboriginal adults.<sup>85</sup> More than 30 years on, Aboriginal men are 15 times more likely than non-Aboriginal men to be in prison and Aboriginal women are 22 times more likely to be in prison than non-Aboriginal women.<sup>86</sup>
72. Over the decade to June 2020 (the decade prior to the COVID pandemic, which resulted in an anomalous decline in prisoner numbers), the number of Victorians in prison increased by approximately 58 per cent.<sup>87</sup> For First Peoples, the increase was considerably higher at approximately 148 per cent. Over this period, the number of Aboriginal people in prison on 30 June each year increased from 290 to 718.<sup>88</sup> On 30 June 2022, there were 695 First Peoples in prison.<sup>89</sup>
73. In 2013 and 2018, amendments to the *Bail Act 1977* introduced new offences and expanded the range of offences for which bail would not be granted, unless a person could show compelling or exceptional reason as to why they should be released on bail. The Government acknowledges that these changes have had a disproportionate impact on First Peoples. Following these amendments, the number of First Peoples entering prison unsentenced increased significantly. Between 2009–10 and 2019–20, there was a 560 per cent increase in First Peoples entering prisons unsentenced (compared to 310 per cent for all Victorians).<sup>90</sup>
74. The Government is committed to introducing legislation into Parliament this year to reform bail laws. The Government acknowledges the recent coronial findings into the death of Veronica Nelson and recognises that remand and custody should be used to keep Victorians safe, and not unnecessarily punish vulnerable community members for minor crimes when there is a better response. The changes will address concerning impacts of current laws while maintaining an appropriate approach to those who pose a risk to community safety. The Government is currently consulting with Aboriginal Victorians, victims' groups, the legal sector, Victoria Police and others on the reforms under consideration.
75. The Government is open to examining what other laws could be amended or created to explore ways of preventing crime, reducing reoffending and providing genuine opportunities for those who come into contact with the justice system to turn their lives around.
76. The 2013 Sentencing Advisory Council report found that First Peoples who had committed offences were more likely to be sentenced by the Magistrates' Court to imprisonment than

<sup>85</sup> RCIADIC, *National Report*, Volume 2, 13.5.12.

<sup>86</sup> Victorian Government, "VGAAR 2021: data tables 15.2.2b and 15.3.2b". Though there is a distinction between custody and prison, these statistics still demonstrate that First Peoples are being detained in Victoria at far higher rates than non-Aboriginal Victorians.

<sup>87</sup> Corrections Victoria – DJCS, "Annual Prisoner Statistical Profile 2009-10 to 2019-20: table 1.3," Corrections, Prisons & Parole, modified 25 October 2022, <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>.

<sup>88</sup> Corrections Victoria – DJCS, "Annual prisoner statistical profile 2009-10 to 2019-20: table 1.3".

<sup>89</sup> Corrections Victoria – DJCS, "Monthly prisoner and offender statistics 2021-22: table 1.12," Corrections, Prisons & Parole, modified June 2022, <https://www.corrections.vic.gov.au/monthly-prisoner-and-offender-statistics>.

<sup>90</sup> On an average day in 2009–10, there were 263 First Peoples in custody as opposed to 1472 in 2019–20. Victorian Government, *Whole of Victoria Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, 33.



non-Aboriginal Victorians (37 per cent versus 29 per cent) – even when taking other factors into account such as offence type and prior sentencing.<sup>91</sup>

77. The Government acknowledges that First Peoples are under-represented among people supervised on parole in the community.<sup>92</sup>
78. The Government has acknowledged the discriminatory impact that Victoria's public drunkenness laws have had on Aboriginal people,<sup>93</sup> and notes the frustration caused by delays, including due to COVID-19, in implementing a health-based response to public intoxication. Decriminalisation will come into effect in November 2023 and will remove public drunkenness offences, which means that people cannot and will not be arrested and detained solely for being drunk in public.
79. The Government is currently conducting trials in four locations: City of Yarra, Dandenong, Shepparton and Castlemaine. Trial implementation committees have been established including Victoria Police, health service providers and Aboriginal specific services, to ensure services are working together, and guide how best to support people found intoxicated in public following decriminalisation.

### ***Systemic injustice in prisons***

80. Since the opening of the State's first gaol, a hut on 'Batman's Hill', in 1837,<sup>94</sup> Victoria's prison network has expanded to 15 prisons. The imprisonment rate has likewise steadily increased, particularly between 1977 to 2021 from 38.4 to 109 per 100,000 people.<sup>95</sup> First Peoples are over-represented in the prison system,<sup>96</sup> and Victorian prisons do not always provide First Peoples with culturally safe conditions or adequate supports.<sup>97</sup>
81. The Government acknowledges that incarceration has long-term negative social, economic and health impacts. Release from prison is the point at which First Peoples are most at risk

<sup>91</sup> Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria* (Melbourne: 2013), x. <https://www.sentencingcouncil.vic.gov.au/publications/comparing-sentencing-outcomes-for-koori-and-non-koori-adult-offenders-magistrates>.

<sup>92</sup> As at 30 June 2021, there were 781 prisoners on parole – only 5 per cent were Aboriginal (n=37). See Adult Parole Board Victoria, *Annual Report 2020-21* (Melbourne: 2021), 3. <https://www.adultparoleboard.vic.gov.au/publications-and-news/annual-reports>.

<sup>93</sup> Victorian Government, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, 56.

<sup>94</sup> This gaol was only in operation for a year, as it was reportedly burnt down in 1838 by two Aboriginal men – Tullamarine and Jin Jin – who had been arrested after digging up potatoes. See State Library of Victoria, "Melbourne's first gaols," State Library of Victoria, <https://ergo.slv.vic.gov.au/explore-history/rebels-outlaws/law-enforcement/melbournes-first-gaols>.

<sup>95</sup> Sentencing Advisory Council, "Victoria's Imprisonment Rates," Victorian Government, modified 4 November 2022, <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/victorias-imprisonment-rates>.

<sup>96</sup> Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system*, 60; Victorian Government, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, 39.

<sup>97</sup> Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system*, xxvii.



due to a heightened risk of death,<sup>98</sup> as well as increased risks of homelessness, unemployment, family and community dislocation and financial insecurity.<sup>99</sup>

82. Furthermore, those exiting the corrections system are also at the highest risk of reoffending. In 2020–21, the rate of sentenced Aboriginal women and men returning to prison within two years of release was 46.2 per cent and 53.1 per cent respectively (compared to 34 per cent and 43.3 per cent for non-Aboriginal women and men).<sup>100</sup>
83. The removal of a person from supportive factors such as family, community, and culture often worsens social dislocation and trauma. Conditions in prison, in addition to a lack of custodial and transition supports (especially drug and alcohol programs, housing, health care and employment), contribute to a high risk of reoffending.<sup>101</sup>
84. The Government recognises that prisons can be particularly traumatic places for First Peoples – places that compound intergenerational trauma and poverty.

### **Over-representation in youth justice**

85. For Aboriginal children and young people, there has been some progress and improvement in outcomes. Victoria has reduced the average daily number of First Peoples aged 10–17 under youth justice supervision from 132 in 2016–17<sup>102</sup> to 59 in the second half of 2021.<sup>103</sup> Victoria is on track to exceed the *Burra Lotjpa Dunguludja* goal of reducing the number of Aboriginal children and young people under justice supervision on an average day to fewer than 89 by 2023.<sup>104</sup>
86. Despite these gains, Aboriginal children and young people remain over-represented in the criminal justice system compared to their non-Aboriginal peers. On an average day in 2020–21, First Peoples children and young people were roughly 12 times more likely than their non-Aboriginal counterparts to be under youth justice community-based supervision, and more than 6 times more likely to be detained.<sup>105</sup> Remand continues to be of particular concern, with

<sup>98</sup> VACCHO, *Keeping our mob healthy in and out of prison*, 14.

<sup>99</sup> Anthea Susan Krieg, "Aboriginal incarceration: health and social impacts," *Medical Journal of Australia* 184, no. 10 (2006), 534-36; Australian Institute of Criminology, "Mortality and morbidity in prisoners after release from prison in Western Australia 1995–2003," (Canberra: 2006), <https://www.aic.gov.au/sites/default/files/2020-05/tandi320.pdf>.

<sup>100</sup> Victorian Government, "VGAAR 2021: data table 15.2.3 and 15.3.3".

<sup>101</sup> DJCS, *Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4*, 44; Sentencing Advisory Council, *Does Imprisonment Deter?*

<sup>102</sup> Victorian Aboriginal Justice Agreement, "How we will know if we are on track," <https://www.aboriginaljustice.vic.gov.au/the-agreement/burra-lotjpa-dunguludja-the-aboriginal-justice-agreement-phase-4/how-we-will-know-if>: 'There were 132 Aboriginal children under youth justice supervision (in detention and on community based orders) on an average day in 2016-17 (a rate of 14.8 per 1,000 Aboriginal children)'.

<sup>103</sup> Victorian Government, *Victorian Government Aboriginal Affairs Report, 2021*, Goal 15 reporting, <https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2021/justice-and-safety>.

<sup>104</sup> This goal supports the *Burra Lotjpa Dunguludja* target of closing the gap in the rate of Aboriginal and non-Aboriginal people under youth justice supervision by 2031. It also reflects the less ambitious National Agreement Outcome and Target 11 to reduce the rate of Aboriginal children and young people in detention by at least 30 percent by 2031, compared to the baseline year of 2018-19 (Victoria has demonstrated improvement against this baseline so far).

<sup>105</sup> Victorian Government, "VGAAR 2021: data table 15.1.2".

- nearly 70 per cent of Aboriginal children and young people in detention being on remand in 2020–21.<sup>106</sup>
87. The reduction in the number of young people under youth justice supervision is supported by Youth Justice in DJCS adopting an individual approach to each child or young person on a court order. Youth Justice has sourced services that respond to the particular needs of Aboriginal children and young people, involving their family and relevant ACCOs, and notifying the CCYP of the child's situation.
88. The Government acknowledges First Peoples' long-standing advocacy to raise the age of criminal responsibility to at least 14 years. It also recognises that Aboriginal children are disproportionately represented between the ages of 10 and 14 years. The justice system is a blunt tool for reducing reoffending – particularly for children and young people who often have complex needs including mental health conditions, cognitive disabilities, problematic drug or alcohol use, or a background of childhood trauma.<sup>107</sup> The Government acknowledges that the needs of children are better served through a therapeutic, trauma-informed approach rather than criminal justice system response, and that early exposure to the criminal justice system can increase the likelihood of future involvement.<sup>108</sup>
89. Victoria's *Youth Justice Strategic Plan 2020–2030* commits to age-appropriate responses to keep 10 to 14-year-olds out of the youth justice system.<sup>109</sup> The Government is participating in the national process, currently led by the Standing Council of Attorneys-General (SCAG) Age of Criminal Responsibility Working Group.<sup>110</sup> The Government is open to acting independently on raising the age if a nationally consistent approach cannot be agreed through the SCAG.<sup>111</sup>

### **Over-policing of First Peoples**

90. The Government acknowledges the Victorian Parliamentary Inquiry into the Criminal Justice System found that over-policing remains an issue despite efforts to address it.<sup>112</sup>

<sup>106</sup> Victorian Government, "VGAAR 2021: data table 15.1.4".

<sup>107</sup> ACT Children and Young People Commissioner, *Children and young people with complex needs in the ACT Youth Justice system: Criminal justice responses to mental health conditions, cognitive disability, drug and alcohol disorders and childhood trauma* (Canberra: 2016), <https://hrc.act.gov.au/wp-content/uploads/2016/03/MHYJ-Report.pdf>. Page 5 of the report notes: 'Across Australia a high proportion of young people in the youth justice system have mental health conditions, cognitive disabilities, problematic drug or alcohol use, or a background of childhood trauma. These young people have complex needs, often requiring intensive therapeutic support'.

<sup>108</sup> Australian Institute of Criminology, *What makes juvenile offenders different from adult offenders?* (Canberra: 2011), <https://www.aic.gov.au/sites/default/files/2020-05/tandi409.pdf>. Page 6: 'It is widely recognised that some criminal justice responses to offending, such as incarceration, are criminogenic; that is, they foster further criminality.' See also Australian Institute of Criminology, *Youth justice in Australia: Themes from recent inquiries* (Canberra: 2020), 7, [https://www.aic.gov.au/sites/default/files/2020-09/ti605\\_youth\\_justice\\_in\\_australia.pdf](https://www.aic.gov.au/sites/default/files/2020-09/ti605_youth_justice_in_australia.pdf).

<sup>109</sup> DJCS, *Youth Justice Strategic Plan 2020–2030* (Melbourne: Victorian Government, 2020), 25, <https://www.justice.vic.gov.au/youth-justice-strategy>.

<sup>110</sup> In December 2022, SCAG released a draft report that outlined the Age of Criminal Responsibility Working Group's recommendation that state and territory governments should raise the minimum age of criminal responsibility to 14 years of age, without exception. See <https://www.ag.gov.au/about-us/publications/standing-council-attorneys-general-communiciques>.

<sup>111</sup> The Hon. Daniel Andrews MP, Premier of Victoria, Parliamentary Debates, Legislative Assembly, 20 December 2022.

<sup>112</sup> Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System*, 189, 197.



91. The Government acknowledges the CCYP's *Our youth, our way* report, which outlined that more than 70 per cent of children and young people consulted reported incidents of racism, mistreatment and violence by Victoria Police. The CCYP noted that these allegations raise significant human rights issues.<sup>113</sup>
92. The 2022 Independent Broad-based Anti-corruption Commission (IBAC) report found that First Peoples are deterred from making complaints about police conduct due to a lack of faith in processes.<sup>114</sup> Numerous inquiries report that the system for handling complaints is highly complex and confusing and that First Peoples under-report misconduct. This report further found that, of complaints made by First Peoples, almost half relate to assaults and use of force by police but not one complaint regarding the use of force was substantiated by Victoria Police.<sup>115</sup> Further, police were found to have minimised the seriousness of these allegations and fail to adequately communicate with complainants.<sup>116</sup>
93. The Government acknowledges the impact that limited police accountability has in perpetuating mistrust of law enforcement within Aboriginal communities. Mistrust can also hinder First Peoples from seeking out police assistance and protection when needed; and deter people from everyday activities such as arranging police checks for employment.<sup>117</sup>
94. The Government is committed to ensuring Victoria's police oversight system is robust, accountable and meets the needs of Victoria's diverse communities. The Government is currently considering all stakeholder feedback from a systemic review of police oversight.<sup>118</sup>

## Part 4: Considerations for the path forward

95. Despite the Victorian Government's commitment to addressing over-representation in the criminal justice system, Government policies and initiatives have not achieved their desired outcomes. The Government suggests, for the Commission's consideration, the following potential areas for reform.

<sup>113</sup> CCYP, *Our youth, our way*, 33.

<sup>114</sup> See, for example, IBAC, *Victoria Police handling of complaints made by Aboriginal peoples: Audit report*, May 2022, 8 <https://www.ibac.vic.gov.au/docs/default-source/intelligence-reports/audit-report---victoria-police-handling-of-complaints-made-by-aboriginal-people---may-2022.pdf>; CCYP, *Our youth, our way*, 50.

<sup>115</sup> See IBAC, *Victoria Police handling of complaints made by Aboriginal peoples*, 7-8. IBAC audited all complaint (41) and serious incident (13) oversight files closed by Victoria Police in the 2018 calendar year. The 41 complaints audited by IBAC involved a total of 63 allegations of police misconduct. Almost half (46 per cent) related to the use of force or assaults by police. This proportion of complaints involving force, and the low substantiation rate of complaints regarding assaults, has been roughly consistent over the last 15 years, as outlined at page 19 of the report. IBAC noted that the substantiation rates in themselves do not reflect whether findings are sound as IBAC's audit did not involve reinvestigating the complaints. In *Our youth, our way*, the CCYP also reports that the majority of complaints made by Aboriginal youth people related to assaults, and that data suggests very low rates of substantiation (see page 435).

<sup>116</sup> IBAC, *Victoria Police handling of complaints made by Aboriginal peoples*, 11.

<sup>117</sup> IBAC, *Victoria Police handling of complaints made by Aboriginal peoples*, 17; Chris Cunneen, "Indigenous Anger and Criminogenic Effects of the Criminal Justice System", *Anger and Indigenous Men*, eds A. Day, M. Nakata and K. Howells (Leichhardt: Federation Press, 2008), 37-46.

<sup>118</sup> The review acquitted recommendation 61 of the Royal Commission into the Management of Police Informants and was in response to the 2018 Parliamentary IBAC Committee's Inquiry into the external oversight of police corruption and misconduct in Victoria. Consideration of stakeholder feedback is ongoing.



## 4.1 Ensuring holistic and culturally safe support for families

96. The Government acknowledges that greater emphasis on prevention and early intervention is necessary. Holistic and culturally safe supports are required to address the inequality that leads to First Peoples entering the criminal justice system<sup>119</sup> in the first instance. Further, the Government acknowledges its responsibility to ensure it is working to address discrimination in decision-making and systemic injustices.<sup>120</sup>
97. Early years learning and development is a key area where good programs can provide improved life outcomes for children and families. The link between access to quality early childhood education and care, and future education and economic success has long been established.
98. The joint Commonwealth and Victorian Government responsibility for early years learning makes linking of the early years and child protection systems more challenging. The current user pays system for childcare subsidy limits access to quality early education and care for vulnerable children, including Aboriginal children.<sup>121</sup> The Government recognises that more needs to be done in partnership with the Commonwealth to support tailored, place-based family and child centres. The Government is working with the Commonwealth through the Early Childhood and Development Policy Partnership and Early Childhood and Care Development Sector Strengthening Plan on opportunities to improve the funding model.
99. Other examples of community-delivered early intervention initiatives funded by the Government include: an investment of \$116 million to implement the Aboriginal social and emotional wellbeing recommendations of the Royal Commission into Victoria's Mental Health System, including the establishment of two co-designed healing centres intended to shift from crisis-driven care to holistic, culturally safe healing;<sup>122</sup> Balert Gerrbik, a culturally safe parenting support program delivered by ACCOs that seeks to build a positive home learning environment for Aboriginal children;<sup>123</sup> expansion of the Bramung Jaarn program, which empowers young Aboriginal men through development of cultural strength and self-esteem; and early intervention and family violence prevention programs for women, delivered by Djirra.<sup>124</sup>
100. Cultural safety training, such as that provided to all sworn police officers,<sup>125</sup> is being introduced across the public sector. However, additional ongoing cultural safety training for

<sup>119</sup> See for example: DPC, *VAAF 2018–2023*, 45; Victorian Government, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, 69; DJCS, *Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4*, 23; DJCS, *Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022–2032*, 34.

<sup>120</sup> See, for example, DJCS, *Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4*, 35.

<sup>121</sup> The current system only provides access to the additional childcare subsidy (welfare) for children who have been, or are likely to, suffer harm as a result of serious abuse, domestic violence or neglect for a defined period of time.

<sup>122</sup> Department of Treasury and Finance, *State Budget 2021–22: Budget Paper No. 3 – Service Delivery*, 9.

<sup>123</sup> DPC, *VGAAR 2021*, 59.

<sup>124</sup> Department of Treasury and Finance, *State Budget 2021–22: Budget Paper No. 3 – Service Delivery*, 3.

<sup>125</sup> All DFFH employees undertake a mandatory online Cultural Safety training. There are also two Cultural Awareness training programs delivered by the Koorie Heritage Trust: one for staff and one for managers. Victoria Police has recently introduced mandatory training for all sworn officers and as of 30 June 2022, 32 per cent of police officers had received training. See DPC, *VGAAR 2021*, 115.

policy makers and service providers is required, as are measures to employ and retain First Peoples. The Government has also invested \$40 million in the Aboriginal Workforce Fund,<sup>126</sup> acknowledging that Aboriginal-led, culturally safe services would more effectively address individual and family needs and help to address unconscious bias.

## 4.2 Implementing improved budget and funding processes

101. The State Budget process does not include a mechanism for Aboriginal community decision-making on budget priorities and outcomes, and it is difficult to track First Peoples' funding over multiple years. The Treaty Negotiation Framework includes funding and revenue-raising as potential subject matters for Treaty negotiations, and offers the potential, over time, to transfer the Victorian Government's spending on First Peoples to a representative decision-making body.<sup>127</sup> An ongoing representative body could lead reforms to improve budget outcomes for First Peoples – working with ACCOs to determine funding priorities and linking budget reporting measures to Aboriginal-led outcome measurements.
102. As part of its National Agreement commitments, the Government will undertake an Expenditure Review in 2023 to examine spending on Aboriginal-specific services from 2019-20 onwards, quantify the benefit that First Peoples receive from mainstream services and programs, and identify opportunities for reprioritisation to ACCOs. Community Members of Victoria's Partnership Forum on the National Agreement determined the scope of the Review, which has been endorsed by the full Partnership Forum. The Review will enable First Peoples to have greater insight into how government funding is being used to support them.
103. The Self-Determination Fund, agreed between the Assembly and the State of Victoria in 2022, will support Aboriginal negotiating parties to have equal standing with the State in the negotiation of Treaties, and promote broader economic development priorities for First Peoples. The Self-Determination Fund has been established as a charitable trust, sitting outside of government. It is an example of how flexible funds external to government could be used to provide First Peoples with greater control over funding priorities and decisions.<sup>128</sup>

## 4.3 Strengthening accountability

### ***First Peoples access to and control of data***

104. The Government understands that 'since Colonisation, successive Victorian governments and agencies have imposed their ways of counting populations, cultures and territories.'<sup>129</sup>
105. The way data is collected and analysed impacts outcomes. The Government acknowledges that the State's approach to data collection and analysis, including the data in this

<sup>126</sup> More information is available at <https://www.premier.vic.gov.au/boosting-aboriginal-workforce-and-pandemic-recovery>.

<sup>127</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 2022, cl. 25.2(e)(iii)(H) and 25.3(b).

<sup>128</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Self-Determination Fund Agreement*, 2022, <https://www.firstpeoplesrelations.vic.gov.au/self-determination-fund-agreement>.

<sup>129</sup> The Hon. Gabrielle Williams MP, Witness Statement to the Yoorrook Justice Commission, 3 May 2022, 16, [117].



submission, often results in 'deficit framing that focus[es] on First Peoples' disadvantage, disparity and deprivation'.<sup>130</sup> This, in turn, impacts policy and funding decisions and can support and perpetuate systemic biases.

106. The Government is making some progress regarding data transparency and sharing. For example, through publishing data dashboards which track progress against commitments under the VAAF, National Agreement, and AJA.<sup>131</sup> However, multiple independent inquiries have made findings and recommendations about these shortcomings in the criminal justice system, not all of which have been implemented.<sup>132</sup> The Government acknowledges that there has not been central monitoring or analysis of these recommendations to help guide a whole of government approach to data reform.
107. The Government acknowledges that consistent with the principle of self-determination, First Peoples are best placed to determine which data and analysis practices can most effectively evaluate and analyse First Peoples' experiences and services. The Government will be guided by the Commission's recommendations and Treaty outcomes in progressing Indigenous Data Sovereignty (IDS) reform, acknowledging that the Assembly has also included IDS as a subject matter for Statewide Treaty negotiations. The Government acknowledges the opportunity that exists to embed institutional arrangements to support IDS through Treaty.

### **Monitoring, evaluation and accountability mechanisms**

108. First Peoples have long advocated for independent oversight and accountability mechanisms. This includes the call for reform to police oversight. As discussed above, the Government is currently considering consultation to inform the policy development for reform. The Government will continue to work with Aboriginal stakeholders along with IBAC and Victoria Police to strengthen the mechanisms for police oversight and accountability.
109. The Government also recognises a lack of community trust in the oversight and monitoring of the prison system. The Government is also working with the Commonwealth to meet Australia's obligations under the United Nations' Optional Protocol to the Convention Against Torture (OPCAT), including seeking Commonwealth funding to facilitate the implementation

<sup>130</sup> The Hon. Gabrielle Williams MP, Witness Statement to the Yoorrook Justice Commission, 3 May 2022, 16, [117].

<sup>131</sup> VAAF data dashboard, <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-data-dashboard>; Victorian Aboriginal Justice Agreement, "Outcomes," <https://www.aboriginaljustice.vic.gov.au/outcomes>

<sup>132</sup> CCYP, *Our youth, our way*, 40; CCYP, '...safe and wanted...', 23; CCYP, *Always was, always will be Koori children*, 14; VAGO, *Administration of Parole*, (Melbourne: 2016), <https://www.audit.vic.gov.au/report/administration-parole>; Royal Commission into Family Violence, *Report and Recommendations* (Melbourne, Victorian Government, 2016), <http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>; Ombudsman Victoria, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Melbourne, Victorian Government, 2015), <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>; VAGO, *Kinship Care Independent assurance report to Parliament 2021–22* (Melbourne, Victorian Government, 2022) . <https://www.audit.vic.gov.au/report/kinship-care?section=>

of a National Preventative Mechanism to monitor places of detention.<sup>133</sup> The Government acknowledges that it must do more to improve accountability processes.

110. The Treaty Negotiation Framework agreed between the State and the Assembly provides for discussion of whether, and if so, how, a First Peoples' representative decision-making body, an authoritative Voice to Parliament and other forms of institutional oversight by First Peoples for the benefit of First Peoples, should be created.<sup>134</sup> This could be an avenue through which First Peoples representatives can access government information at an early stage, have a strong role in decision-making from the beginning and hold the State to account.

## Part 5: Conclusion

111. Colonisation, justified by an ideology of racial supremacy, has caused immeasurable damage to First Peoples, the effects of which are still evident today. The Government acknowledges this and through Truth and Treaty has set up a process to engage with Victoria's First Peoples to begin to address this.
112. To date, the Government has largely attempted to respond to systemic injustices by working with Aboriginal governance forums, experts and ACCOs to shift and reform systems towards better outcomes.
113. The Commission now has a mandate to make bold recommendations, and the Government, in partnership with the Assembly, is looking to the Commission to provide guidance on a pathway forward.
114. Truth and Treaty offer all Victorians – Aboriginal and non-Aboriginal – an opportunity to shape a new relationship and a new future. This is an opportunity for a renewed state identity – a shared understanding of our history, and an enduring respect for First Peoples' fundamental right to self-determination.

<sup>133</sup> The Australian Human Rights Commission's 2022 'Road Map to OPCAT Compliance' notes the Victorian Ombudsman and Commission for Children and Young People as possible designated National Preventative Mechanisms. See report at [https://humanrights.gov.au/sites/default/files/opcat\\_road\\_map\\_0.pdf](https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf). The Victorian Government has been consistent in its position that a sufficient and ongoing funding commitment from the Commonwealth is essential to establish and maintain a National Preventative Mechanism in Victoria. See Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System*, 630 and Ms K Hall, Legislative Assembly, Parliamentary Debates (1 September 2022), 3589, <https://new.parliament.vic.gov.au/parliamentary-activity/hansard/hansard-details/HANSARD-2145855009-17779>

<sup>134</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 2022, cl. 25.3 (b).



# Victorian Government submission to the Yoorrook Justice Commission

Response to Issues Paper 2: Call for  
Submissions on Systemic Injustice in the Child  
Protection System

17 March 2023

# Contents

Acknowledgment .....	3
Part 1: Introduction .....	3
Part 2: The Child Protection and Family Services portfolio.....	4
Part 3: Systemic injustice in the Child Protection system .....	4
Part 4: The Government's response to date.....	9
Part 5: Recent actions .....	14
Part 6: Future reform.....	15
Conclusion .....	19



## Acknowledgment

1. The Victorian Government acknowledges the Traditional Owners of the Country across all lands and waters now known as the State of Victoria and pays respect to Elders past and present.
2. Sovereignty has never been ceded.
3. The Government acknowledges the profound impact of colonisation and apologises for the role governments have played. The Government acknowledges the wide-spread theft of land, dispossession of culture, removal of children, enforced poverty, dehumanisation, criminalisation and institutionalisation that colonisation entailed. The Government acknowledges that colonisation was premised on erroneous beliefs of racial superiority—and First Peoples inferiority—and that these racist beliefs, and the systems, laws and institutions that were built upon them, persist today.
4. The Government also acknowledges the strength and resilience of First Peoples in Victoria who have faced historical and ongoing injustices, and the courage it has taken for survivors of historical and current injustices to tell their stories.

## Part 1: Introduction

5. Since establishing the Yoorrook Justice Commission (Commission) in partnership with the First Peoples' Assembly of Victoria (Assembly), the Victorian Government (the Government) has remained deeply committed to the truth-telling objectives of the Commission. The Government welcomes the opportunity to contribute to the Commission's work and respond to its call for submissions.
6. The Commission's inquiry into the Child Protection system is a critical step in the journey towards understanding and accepting our collective history and the truth of First Peoples' experiences, including the State's role within that.
7. This submission focuses on the Child Protection system, for which the Minister for Child Protection and Family Services is the responsible Minister and the Department of Families, Fairness and Housing (the department) the responsible Department.
8. This submission supports the Government's commitment to truth-telling and engagement with the Commission transparently and in good faith. It offers a government perspective on the current Child Protection system; the steps taken to date that seek to ameliorate and address systemic injustice in the Child Protection system; and the current approaches being undertaken to change the system in order to reduce over-representation and provide greater levels of self-determination for First People.

## Part 2: The Child Protection and Family Services portfolio

9. The Child Protection and Family Services portfolio is responsible for the protection of vulnerable Victorian children and young people from harm caused by abuse and neglect within their families. It provides support to families to keep children safe, strengthen families and help them thrive. Its key responsibilities include:
- Supporting children, young people and families experiencing, or at risk of, harm.
  - Preventing and responding to risks to children's safety and wellbeing.
  - Supporting children and young people who are unable to remain safely in the family home.
  - Responding to historical harm and abuse and providing support to people who grew up in care prior to 1990.
10. The Child Protection and Family Services portfolio interfaces with other portfolios, including but not limited to Education, Early Childhood and Pre-Prep, Health, Housing, Mental Health, Prevention of Family Violence, and Youth Justice.
11. Preventing and responding to factors that contribute to abuse and neglect requires an integrated approach across all levels of government recognising the critical role Local, State and Commonwealth governments play in the delivery of universal, secondary, and tertiary services and how these services interact to support children and families.

## Part 3: Systemic injustice in the Child Protection system

### Impact of colonisation

12. The over-representation of First Peoples children in the Child Protection and Care systems is a direct result of laws and policies introduced during colonisation. The impacts of historical laws and policies – especially those that supported the forced removal of First People's children from their families and communities in pursuit of assimilation – continue to be felt profoundly today.
13. The Victorian Government recognises the critical role of self-determination in achieving the targets under the Victorian Aboriginal Affairs Framework (VAAF), in particular Goal 2.1, to 'Eliminate the over-representation of Aboriginal children and young people in out of home care'<sup>1</sup>.

---

<sup>1</sup> DPC, *Victorian Aboriginal Affairs Framework (VAAF) 2018–2023*, (Melbourne: Victorian Government, 2018), 34, <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>.



14. Since European occupation of Victoria in the 1830s, legislation sought to dispossess First Peoples through segregation and assimilation<sup>2</sup>. A complex set of laws enabled the creation of the Stolen Generations<sup>3</sup>. This included a suite of ‘protectionist’ Acts under which ‘Indigenous people were subject to near-total control’<sup>4</sup>.
15. In 1860, a Parliamentary Select Committee handed down a report recommending the creation of reserves and a central board for the protection of Aboriginal people<sup>5</sup>. The subsequently established board advocated for the introduction of the *Aboriginal Protection Act 1869* (1869 Act), which bestowed the Governor of Victoria with the power to introduce regulations relating to First Peoples<sup>6</sup>.
16. The 1869 Act was the first colonial law to establish a comprehensive system of government control and administration of First Peoples on the continent<sup>7</sup>. This law marked the beginning of legislating racialised control, enabling regulations that circumscribed many aspects of First Peoples’ lives. Some argue that the 1869 Act ‘set the pattern for subsequent laws applying to Indigenous people in Victoria’,<sup>8</sup> and even provided a model for control over First Peoples across other Australian colonies<sup>9</sup>.
17. The 1869 Act allowed for regulations regarding ‘the care custody and education of the children of aborigines’,<sup>10</sup> and several regulations under the legislation allowed for the forced removal of First Peoples’ children from their families<sup>11</sup>. The 1869 Act also empowered the Governor to make regulations about where First Peoples lived and whether they could earn money<sup>12</sup>. This strengthened the State’s ability to force First Peoples into poverty and onto newly established missions and reserves,

<sup>2</sup> Pat Dudgeon et al., “The social, cultural and historical context of Aboriginal and Torres Strait Islander Australians,” in *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, eds. Pat Dudgeon et al. (Canberra: Aboriginal Institute of Health and Welfare, 2010), 25–42.

<sup>3</sup> As well as ‘protectionist’ legislation, this included the *Neglected and Criminal Children Act 1864* and the *Adoption Act 1928*.

<sup>4</sup> Gabrielle Williams MP, Witness Statement to the Yoorrook Justice Commission, 3 May 2022, 9, [73]; Australian Human Rights Commission (AHRC), *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander Children from their Families* (Canberra: Australian Government, 1997), 23.<sup>4</sup> Victorian Select Committee upon Protection to the Aborigines, *Proceedings of Committee, Friday 9<sup>th</sup> March 1860* (Melbourne: Parliament of Victoria, 1860), <https://nla.gov.au/nla.obj-726882702/view?partId=nla.obj-726885911#page/n2/mode/1up>.

<sup>5</sup> Victorian Select Committee upon Protection to the Aborigines, *Proceedings of Committee, Friday 9<sup>th</sup> March 1860* (Melbourne: Parliament of Victoria, 1860), <https://nla.gov.au/nla.obj-726882702/view?partId=nla.obj-726885911#page/n2/mode/1up>.

<sup>6</sup> *Aboriginal Protection Act 1869*, s. 2.

<sup>7</sup> Leigh Boucher, “The 1869 Aborigines Protection Act: Vernacular ethnography and the governance of Aboriginal subjects,” in *Settler Colonial Governance in Nineteenth-Century Victoria*, eds. Leigh Boucher and Lynette Russell (Canberra: ANU Press, 2015), 66

<sup>8</sup> AHRC, *Bringing them home*, 50.

<sup>9</sup> Boucher, “The 1869 Aborigines Protection Act: Vernacular ethnography and the governance of Aboriginal subjects,” 66.

<sup>10</sup> *Aboriginal Protection Act 1869*, s. 2.

<sup>11</sup> AHRC, *Bringing them home*, 51.

<sup>12</sup> *Aboriginal Protection Act 1869*, s. 2.

- preventing their participation in the colonial economy and allowing the allocation of stolen land to colonial pastoralists.
18. The Government acknowledges that this early legislation brought about many of the intergenerational circumstances, such as disconnection from identity, Country and culture, poverty and housing stress, which continue to bring First Peoples into contact with, and under the scrutiny of, the Child Protection system
  19. Subsequent iterations of the protectionist legislation more overtly embedded the practice of removing children from their families. Colonial governments sought to assimilate First Peoples, including by forcibly removing their children, into the European society and workforce<sup>13</sup>. While the term 'assimilation' was not expressly used in State policy until later in the 20th century, both the *Aborigines Protection Act 1886* (1886 Act) and *Aborigines Act 1928* (1928 Act) reveal this shift towards assimilationist goals.
  20. The removal of First Peoples children was often facilitated under protectionist legislation, rather than child welfare legislation, so that State officials could avoid having to prove neglect before a court to justify their actions<sup>14</sup>. The 1886 Act allowed for specific regulations for people of mixed descent, under which many children were removed from their families<sup>15</sup>.
  21. The *Aborigines Act 1957* (1957 Act) established the Aborigines Welfare Board with an openly assimilationist objective,<sup>16</sup> as the '*policy of segregating full descent people ... and dispersing those of mixed descent had failed*'<sup>17</sup> Although the Board had no power to remove First Peoples children from their families, under child welfare laws it could initiate forced removal by notifying police where there were welfare concerns about particular children, thus enabling the continuation of Stolen Generation practices.<sup>18</sup>
  22. This legislative and regulatory trajectory enabled State authorities to forcibly remove multiple generations of First Peoples children from their families, leading to irreparable intergenerational trauma. The *Bringing Them Home* report found that from 1910 to 1970, 'between one in three and one in ten Indigenous children were forcibly removed from their families and communities' across Australia.<sup>19</sup>
  23. For more than 100 years segregation and assimilation policies were used to intentionally remove First Peoples children from their families under the guise of protection.

---

<sup>13</sup> AHRC, *Bringing them home*, 24.

<sup>14</sup> AHRC, *Bringing them home*, 25.

<sup>15</sup> *Aborigines Protection Act 1886*, ss. 3, 6-8; AHRC, *Bringing them home*, 51.

<sup>16</sup> *Aborigines Act 1957*, s. 6.

<sup>17</sup> AHRC, *Bringing them home*, 53.

<sup>18</sup> AHRC, *Bringing them home*, 54.

<sup>19</sup> AHRC, *Bringing them home*, 31.



24. It was not until the late 1960s that public policy began to change from assimilation to acceptance that First Peoples children should remain with their families, coinciding with the 1968 abolition of the Aborigines Welfare Board and establishment of the Ministry of Aboriginal Affairs<sup>20</sup>. The Victorian Aboriginal Child Care Agency (VACCA) was established in 1976 in response to First Peoples' concerns that First Peoples children were continuing to be removed from their families and placed with non-First People carers.<sup>21</sup> The *Children and Young Persons Act 1989* reflected this shift. It recognised family preservation as a key objective of the child protection system and required the involvement of Aboriginal family, community and Aboriginal Community Controlled Organisations (ACCOs) in key decisions made about First Peoples children.<sup>22</sup> In 2005, the Aboriginal Child Placement Principle was incorporated into legislation.<sup>23</sup>
25. Despite the move away from assimilation policies and numerous attempts at reform, the Government recognises that the devastating colonial underpinnings of the Child Protection system continues to influence the operation of the system today, resulting in over-representation of First Peoples children and ongoing injustice.

### **Involvement with Child Protection and drivers of over-representation**

26. Over-representation of First Peoples in the contemporary Child Protection system is a product of serious systemic injustice, which the State acknowledges.
27. The State's dispossession of First Peoples, the forced removal of their children, and denial of Law, Lore and culture, created the conditions for the intergenerational trauma and social and economic inequality experienced today.
28. In 2021-22 there were 7,053 unique reports for First Peoples children reported to Child Protection (1 in 3.5 First Peoples children are reported), with 2,170 reports substantiated (1 in 12 First Peoples children have reports substantiated), and 2,578 First Peoples children on care orders with the Secretary (1 in 10 First Peoples children in care), as of 30 June 2022.

<sup>20</sup> AHRC, *Bringing them home*, 58; Victorian Aboriginal Child Care Agency (VACCA), *Working with Aboriginal Children and Families: A Guide for Child Protection and Child and Family Welfare Workers* (Melbourne: VACCA, 2006), 13; <https://www.childabuseroyalcommission.gov.au/sites/default/files/VAC.0001.003.0454.pdf>. See also Public Record Office Victoria's page on Aboriginal Affairs at <https://prov.vic.gov.au/archive/VF175>

<sup>21</sup> AHRC, *Bringing them home*, 58-59; VACCA, "Aboriginal Child Placement Principle", Victorian Aboriginal Child Care Agency, <https://www.vacca.org/page/about/aboriginal-child-placement-principle>.

<sup>22</sup> *Children and Young People Act 1989*, ss. 119(1)(b), (1)(m) and (2). One of the primary objectives of the 1989 Act was to strengthen the distinction between children in need of protection and children who had allegedly committed a crime. Since the creation of the Victorian Children's Court in 1906, its governing legislation throughout the 20<sup>th</sup> century did not clearly separate out the Court's dual child protection and criminal justice roles. See Children's Court Research Materials at <https://www.childrenscourt.vic.gov.au/file/research-materials-chapter-1>, Part 1.1.

<sup>23</sup> *Children, Youth and Families Act 2005*, s.13(2), The Aboriginal Child Placement Principle (ACPP) states that as a priority, wherever possible, Aboriginal children (as the first option) are to be placed within the Aboriginal extended family or relatives and where this is not possible with other extended family or relatives. The ACPP then has a series of cascading options in order of preference with the last resort being placement with a non-Aboriginal family living in close proximity to the child's family.

29. As a consequence of the history of dispossession and systemic injustices of colonial laws and policies, Victoria has some of the highest rates of over-representation across Australia. As of June 2022, First Peoples children were five times more likely than non-First Peoples children to be the subject of a report to Child Protection, seven times more likely to have a report investigated, nine times more likely to have harm substantiated and 22 times more likely to be in care.
30. Data analysis by the department indicates that known risk factors such as family violence, substance abuse, homelessness, and poor mental health, are closely correlated with Child Protection involvement across all families. Due to the racist legacies of colonialism and dispossession, these risk factors statistically present with greater frequency in First Peoples families. Structurally biased systems and decision-making play a role in compounding this, increasing the likelihood risk is substantiated and a protective intervention, including taking a child into care, will proceed.
31. The Government acknowledges that more needs to be done earlier in response to risk factors, such as family violence, homelessness, substance misuse and poor mental health, to prevent families' involvement in the Child Protection system in the first place.
32. In the last decade, the Government has undertaken significant review and reform to seek to address the unacceptably high rates of over-representation of First Peoples children in the Child Protection system, and to respond to unjust policies and practices that have adversely affected First Peoples children and families.
33. The current service system is not well adapted to meet the needs of First Peoples nor to provide access to culturally appropriate services that help prevent or address these risk factors as early as possible and in a culturally appropriate and holistic manner. Contributing factors, the Commission may wish to explore further in its work may include:
  - The failure of the State to gain the trust of First Peoples in earlier intervention family services or 'diversionary' placement prevention and reunification services.
  - The need to support more families earlier in need, as services focus resources on those families with the most complex needs.
  - Systemic issues whereby Child Protection legislation, policies and procedures may be driving interventionist approaches by not adequately enabling timely and deeper engagement to facilitate change.
  - A lack of culturally appropriate exit pathways from Child Protection for First Peoples children placed in care who cannot be safely reunified with their parents.
  - The impact of conscious and unconscious bias on decisions made by reporters and decision-makers in the Child Protection system.



## Part 4: The Government's response to date

34. In the last decade, the Government has undertaken significant review and reform that seeks to address the high rates of over-representation of First Peoples children in the Child Protection system and to respond to policies and practices that have adversely affected First Peoples children and families.
35. This section seeks to assist the Commission's current lines of inquiry by outlining several Child Protection system reforms that have sought to address injustices outlined in the Commission's Issues Papers.

### Taskforce 1000 and Commission for Children and Young People inquiries

36. Taskforce 1000 (undertaken in 2014 –16) was a joint initiative between the then Department of Health and Human Services and the Commission for Children and Young People (CCYP). Taskforce 1000 examined the circumstances of approximately 1,000 First Peoples children and young people on final orders in care and led to the CCYP's 2016 *Always was, always will be Koori children* report<sup>24</sup>. This inquiry, and the CCYP's subsequent inquiry into Child Protection's compliance with the Aboriginal Child Placement Principle,<sup>25</sup> made 133 recommendations for improving outcomes for children in out-of-home care. Many subsequent reforms have been informed by these inquiries.
37. A working group of the Aboriginal Children's Forum (ACF), which is detailed below, oversees the implementation of these recommendations, of which 104 have been endorsed by the CCYP as completed or retired. Of the remaining 29 recommendations, 19 are considered complete by the department and will be assessed by the CCYP. The remaining 10 are being progressed with approximately half of these related to legislative amendments to strengthen the Aboriginal Child Placement Principle that are expected to be acquitted through the passage of the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023* (see paragraphs 60-62 for more information on this Bill).
38. Importantly, implementation of these recommendations along with other reforms has seen significant improvements to support the identification of Aboriginality and to prevent de-identification without oversight, implementation of the cultural support program for all First Peoples children in care, strengthening compliance with the Aboriginal Child Placement Principle and the strengthening of professional development in respect to

---

<sup>24</sup> CCYP, *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* (Melbourne: 2016), <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>

<sup>25</sup> CCYP, *In the child's best interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria* (Melbourne: 2016), <https://ccyp.vic.gov.au/assets/Publications-inquiries/In-the-childs-best-interests-inquiry-report.pdf>. The Aboriginal Child Placement Principle is contained in sections 13–14 of the *Children, Youth and Families Act 2005*.

working with First People children and families including improving practitioner's access to cultural advice both internally and externally to the department.

### **Aboriginal Children's Forum (ACF)**

39. The ACF was established in June 2015. The ACF includes representatives of ACCOs, government, and Community Service Organisations (CSOs) that together work to transform service delivery for First Peoples children and families and to move beyond good intentions to better outcomes.
40. The ACF is the current mechanism that gives practical effect to the implementation and monitoring of the 2018 *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement*<sup>26</sup> – the leading policy document for First Peoples child protection policy and delivery.
41. In 2017, the ACF endorsed an ambitious target that 100 per cent of First Peoples children in care, subject to final protection orders, were to be transitioned to the care, case management or authority (section 18 authorisations)<sup>27</sup> of ACCOs by June 2021.
42. The ACF also oversees the implementation and process of *Closing the Gap* – Objective 12, being the reduction of over-representation of First Peoples children in out-of-home care, with a target of 45 per cent reduction by 2031.
43. The Treaty Negotiation Framework agreed between the State and the Assembly provides for discussion of whether, and if so, how, a First Peoples representative decision-making body, an authoritative Voice to Parliament and other forms of institutional oversight by First Peoples for the benefit of First Peoples, should be created.<sup>28</sup> This could be an avenue through which First Peoples representatives can access government information at an early stage and have a strong role in decision-making from the beginning and hold the State to account.

### **Aboriginal Children in Aboriginal Care (ACAC) and the Transition of Aboriginal Children to ACCOs (TAC)**

44. The Government has made progress towards self-determination through transferring power and decision-making for First Peoples children to ACCOs. As of the end of December 2022, 852 (47 per cent) of First Peoples children on final orders and in out-of-home care were either supported by an ACCO subject to a section 18 authorisation or by way of contracted case management being provided by an ACCO.
45. ACAC is an example of self-determination reform where the Government is taking real steps to cede decision-making power to ACCOs. Commenced in 2017, ACAC places decision-making, including case planning, for First Peoples children on final protection

<sup>26</sup> [Department of Families Fairness and Housing Victoria | Wungurilwil Gaggapduir Aboriginal Children and Families Agreement \(dffh.vic.gov.au\)](https://www.dffh.vic.gov.au)

<sup>27</sup> *Children, Youth and Families Act 2005* (Vic), s.18.

<sup>28</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 2022. See for example, cl. 27-28 'Process for formalising agreement' and 'Collective support' in relation to Treaties and Interim Agreements and the definition of Interim Agreement at cl. 37.



orders with authorised ACCOs. It aims to provide power to ACCOs to make decisions about First Peoples children in culturally attuned ways and make a difference in the lives of First Peoples children and families. This is possible under section 18 of the *Children Youth and Families Act 2005* (Vic) (CYFA), but only in relation to First Peoples children and their non-First Peoples siblings who are on final protection orders.

46. Internal departmental data indicates that ACCOs, under section 18 authorisations, are more successful at reunifying First Peoples children with their parents than the department's Child Protection Practitioners. For First Peoples children leaving care between January and June 2021, 83 per cent were reunified with parents/family when case managed by an ACCO under a section 18 authorisation, compared to 64 per cent when case managed by Child Protection.

## First Peoples-led practice models

### Family Preservation and Reunification (FPR) Response

47. The FPR Response began in 2020 under the *Roadmap for Reform: Strong families, safe children*<sup>29</sup> and Wungurilwil Gagapduir<sup>30</sup>. It provides intensive support to First Peoples and non-First Peoples families to reduce the likelihood of children entering care and to reduce the time that they may spend in care and was designed in close consultation with ACCOs to ensure it was culturally appropriate.
48. As of November 2022, 12 ACCOs are involved in delivering the FPR Response and 855 First Peoples families have been connected to the program<sup>31</sup>. Families are supported by a lead family practitioner supported by a care team and can access funding for practical needs and specialist services – intensive and flexible supports that ‘wrap around’ the child and family to build family functioning and keep children safe at home<sup>32</sup>. Practitioners have access to ACCO-designed training and guidance on ways of working with First Peoples children and families.
49. While the program has not yet been evaluated, early outcomes indicate it has had a positive impact on reducing entries to care, with estimates suggesting the FPR Response is responsible for 56 (nine per cent) fewer children in care to date, with larger impacts for families in regional areas and for older children (noting, these results are not disaggregated by cultural background)<sup>33</sup>.

### Child Protection diversion pilots

<sup>29</sup> <https://www.dffh.vic.gov.au/publications/roadmap-reform-strong-families-safe-children>

<sup>30</sup> <https://www.dffh.vic.gov.au/publications/wungurilwil-gagapduir-aboriginal-children-and-families-agreement>

<sup>31</sup> DFFH, Service Agreement Management System (SAMS), and internal DFFH performance data.

<sup>32</sup> See DFFH, *Roadmap for reform: pathways to support for children and families: Priority settling plan 2021-2024* (Melbourne: Victorian Government, 2021), 20-21, <https://www.dffh.vic.gov.au/publications/roadmap-reform-strong-families-safe-children>.

<sup>33</sup> Department of Health, Data retrieved June 2022 from internal data modelling system - Victorian Social Investment Model (VicSIM), Analytics Evaluation and Research Branch.

50. In addition, several ACCO-designed and led pilots are underway to achieve greater self-determination for First Peoples children and families interacting with the Child Protection system. Known as the Aboriginal Child Protection Diversion Trials and funded through Innovation and Learning Grants, these pilots include:

- Aboriginal-Led Case Conferencing Trial (VACCA) which involved reports being referred from Child Protection intake that would have otherwise proceeded to a Child Protection investigation and families being engaged by a specialist caseworker (Aboriginal Led Case Conferencing Convenor) to develop a strategy with the family to address the protective concerns.
- Garinga Bupup Trial (Bendigo & District Aboriginal Co-operative, BDAC) which received referrals where there were concerns about an unborn First Peoples child relating to their safety and wellbeing after birth in early pregnancy with a view to engaging and supporting the mother to minimise the need for Child Protection intervention following the birth.
- Aboriginal Family Led Decision-Making (AFLDM) during Investigation Program Trial (Goolum Aboriginal Cooperative and Njernda Aboriginal Corporation) received referrals from Child Protection Intake with the intention of engaging the family and preventing further Child Protection involvement.

51. Evaluation results demonstrate that the pilots are diverting First Peoples families from Child Protection-led investigations with fewer substantiations. The trial has shown that the First Peoples-led case conferencing trial had a 78 per cent diversion success rate and Garinga Bupup (Unborn reports) had a 63 per cent diversion rate in the local area where the trials ran.<sup>34</sup>

### **Budget and funding**

52. Over the four years from 2019-20 to 2022-23, the Government has invested a total of almost \$2.9 billion of additional funds into the Children and Families system.

53. The Government continues to focus on achieving appropriate investment in ACCOs to deliver Children and Families services in proportion to the level of demand from First Peoples for child and family services for First Peoples children and their families.

54. In 2022-23 the Victorian Government is investing a further additional \$271.6 million across the Child Protection and Family Services portfolio, building on the \$1.2 billion boost in 2021-22 for at-risk children, their families, and carers. Relevant to this reform effort, the 2022-23 budget includes \$7.2 million for First Peoples family services and child protection, as well as:

- \$63.8 million to support community sector jobs;
- \$9.1 million to improve the safety of children and young people in out-of-home care;

---

<sup>34</sup> Seeking Safety; Aboriginal Child Protection Diversion Trials Evaluation Final Report 20 December 2022. The University of Melbourne.



- \$57.6 million to respond to the demand for Child Protection and Family Services; and
  - \$10.4 million to strengthen the community services workforce.
54. Investment in the Child Protection and Family Services portfolio is complemented by investment and activities within other portfolios, including Education, Early Childhood and Pre-Prep, and Health.
55. Victoria has a strong history of First Peoples-delivered family services and placement prevention and reunification services. First Peoples organisations receive 15 per cent of family and parenting services funding. This is on a 'sliding scale' - for less intense family services the department aims for, and achieves, proportional funding at a level equal to the proportion of First Peoples children in reports to Child Protection (9 per cent), and for more intensive family services the department aims for, and achieves, proportional funding equal to the proportion of First Peoples children in entries to care (24 per cent).
57. Any increase in funding for services requires ACCOs to have a sustainable workforce and associated infrastructure in place to deliver services. Workforce recruitment challenges are being faced across all community services, particularly in regionally based organisations and within ACCOs. The Victorian Government has invested through the Aboriginal Workforce Fund in supporting First Peoples organisations to upskill and boost their workforce and organisational capacity.
58. The State Budget process does not include a mechanism for First Peoples community decision-making on budget priorities and outcomes, and it is difficult to track First Peoples' funding over multiple years. The Treaty Negotiation Framework includes funding and revenue-raising as potential subject matters for Treaty negotiations, and offers the potential, over time, to transfer the Victorian Government's spending on First Peoples to a representative decision-making body.<sup>35</sup> An ongoing representative body could lead reforms to improve budget outcomes for First Peoples – working with ACCOs to determine funding priorities and linking budget reporting measures to First Peoples-led outcome measurements.
59. As part of its National Agreement commitments, the Government will undertake an Expenditure Review in 2023 to examine spending on Aboriginal-specific services from 2019-20 onwards, quantify the benefit that First Peoples receive from mainstream community services and programs, and identify opportunities for reprioritisation to ACCOs. Community Members of Victoria's Partnership Forum on the National Agreement determined the scope of the Review, which has been endorsed by the full Partnership Forum. The Review will enable First Peoples to have greater insight into how government funding is being used to support them.
60. The Self-Determination Fund, agreed between the Assembly and the State of Victoria in 2022, will support Aboriginal negotiating parties to have equal standing with the State

---

<sup>35</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 2022, cl. 25.2(e)(iii)(H) and 25.3(b).

in the negotiation of Treaties, and promote broader economic development priorities for First Peoples.<sup>36</sup> The Self-Determination Fund has been established as a charitable trust, sitting outside of government. It is an example of how flexible funds external to government could be used to provide First Peoples with greater control over funding priorities and decisions.

## Part 5: Recent actions

### Statement of Recognition Bill

61. One of the Government's first actions this term has been overseeing the reintroduction of the *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Bill 2023* (Statement of Recognition Bill)<sup>37</sup> into Parliament. The Statement of Recognition Bill includes all aspects of the 2022 Statement of Recognition Bill along with, among other reforms, the five key elements of the Aboriginal Child Placement Principles from the 2021 Child Protection Bill.

62. The Statement of Recognition Bill will advance Aboriginal self-determination and First Peoples models of care by:

- Introducing a Statement of Recognition in the CYFA accompanied by binding principles to guide decision-making regarding First Peoples children, as co-designed with nominated members of the ACF.
- Introducing a Statement of Recognition in health legislation including non-binding principles to guide decision-making.
- Enabling the effective functioning of ACAC by expanding the functions that can be authorised to Aboriginal-led agencies.
- Legislating all five elements of the Aboriginal Placement Principle, namely: prevention; participation; partnership; placement; and connection.

63. Critically, the Bill will enable the commencement of the Community Protecting Boorais pilot, a new nation-leading initiative that will enable Aboriginal-led teams at VACCA and BDAC to investigate child protection reports.

### Strengthening First Peoples designed and led services

64. In December 2022, the Premier, the Hon. Daniel Andrews MP, spoke of the need to change the Child Protection system to better meet the needs of First Peoples children. The Child Protection and Family Services portfolio has commenced a process of engagement about how this might be achieved.

65. In January and March 2023, the Premier and Minister for Child Protection and Family Services met with representatives of the ACF Koori Caucus to listen and to better understand the priorities for a self-determined First Peoples-led service system.

<sup>36</sup> First Peoples' Assembly of Victoria and the State of Victoria, *Self-Determination Fund Agreement*, 2022, <https://www.firstpeoplesrelations.vic.gov.au/self-determination-fund-agreement>.

<sup>37</sup> <https://www.legislation.vic.gov.au/bills/children-and-health-legislation-amendment-statement-recognition-and-other-matters-bill-2022>



66. There remain several areas to be further explored, to strengthen the First Peoples-led service delivery system for First Peoples children and families and close the gap in the rates of over-representation. These may include:
- Keeping children safe and connected to family, culture, community, and Country; noting the limited number of First Peoples-led and designed early help and prevention programs currently operating to divert vulnerable First Peoples children from the Child Protection system.
  - Sustaining proportional funding to ACCOs and responding to their requests for greater flexibility to allow them to deliver more responsive and holistic services.
  - Continuing to implement programs that transfer greater decision-making power to First Peoples community and agencies, rather than the department exercising statutory powers following consultation with local ACCOs.
  - Developing a culturally attuned community services workforce, both in ACCOs and CSOs, so First Peoples children and families have a choice of culturally safe and appropriate service options.
  - Further developing First Peoples-led research and evidence.

## Part 6: Future reform

67. The Government is deeply committed to the objectives of the Commission and to improving and ultimately transforming current systems to create a new relationship between First Peoples and the State of Victoria based on equality, truth and justice.
68. The design of Child Protection and Family Services, as well as family violence, homelessness, substance misuse and mental health services, have not been First Peoples-led and therefore do not reflect how best to support First Peoples' access and engagement with services. These services do not acknowledge and make full use of First Peoples knowledge and expertise about what is best for themselves, their families, and their communities.
69. The Victorian Government recognises the focus needs to move to a self-determined approach that includes greater First Peoples-led decision making across our Child Protection and Care system.
70. The Government acknowledges that the principle and process of enabling self-determination involves more than consulting and partnering with First Peoples on policies and programs that affect their lives.
71. The Government considers there is a historic opportunity to build on the work of this Commission, as the nation's first truth-telling Commission, together with the expertise of Victoria's strong First Peoples-led service system, to progress as quickly as possible the necessary changes to the child protection and family services systems, and supporting systems as needed, to reduce the rate of over-representation of First Peoples children in the system.

## Victorian Aboriginal Affairs Framework (VAAF)

72. Self-determination is the guiding principle of the Government's approach to Aboriginal affairs, as outlined in the VAAF.<sup>38</sup> First Peoples right to self-determination is also recognised in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* and is a core principle underpinning Victoria's Treaty process.<sup>39</sup>

73. In preparing the VAAF, the Government heard from First Peoples that genuine reform of systems and institutions, to address systemic injustice and improve outcomes for First Peoples, can only happen through First Peoples-led processes.<sup>40</sup> Action on self-determination is part of a continuum of change towards Treaty and full decision-making and resource control (see Figure 1).<sup>41</sup>



74. The Government reports annually against the VAAF and its progress along this continuum, with updates included in the Victorian Government Aboriginal Affairs Report. The VAAF holds government to more ambitious targets than Victoria's commitments under the National Agreement, including Goal 2 (2.1) Eliminate the over-representation of Aboriginal children and young people in out of home care.<sup>42</sup>

## Relationship with the Treaty process

75. The fundamental importance of and respect for self-determination underpins the Government's commitment to Treaty. Treaty in and of itself is not the end goal – it is the legal framework through which First Peoples self-determination can be realised.

76. Treaty rejects the fallacy of *terra nullius* and empowers First Peoples to come together and negotiate with the State changes that they consider necessary to further self-determination and wellbeing. Treaty, by its very nature, empowers First Peoples to come together as political, self-determining entities to negotiate with the State on an equal footing.

<sup>38</sup> Department of Premier and Cabinet, *Victorian Aboriginal Affairs Framework (VAAF) 2018–2023*, (Melbourne: Victorian Government, 2018), 22, <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>.

<sup>39</sup> *Advancing the Treaty Process with Aboriginal Victorians Act 2018*, s. 22.

<sup>40</sup> DPC, *VAAF 2018–2023*, 22.

<sup>41</sup> DPC, *VAAF 2018–2023*, 23.

<sup>42</sup> DPC, *VAAF 2018–2023*, 34.



77. The Government endorses the representative role of the Assembly and recognises the significance of the Assembly's electoral and representative structure for all First Peoples in Victoria. The Government is mindful of the State's legal obligation to be ready to negotiate across the Treaty subject matter outlined in the Treaty Negotiation Framework, which includes Child Protection system issues.
78. Statewide Treaty allows for the negotiation of an ongoing, First Peoples representative decision-making body for all Aboriginal Victorians.<sup>43</sup> As stated by the Assembly in its submission to the Commission, Treaty is a process that has the potential to bring about structural reform and transformation.<sup>44</sup> The Government has existing commitments to transfer decision-making power and resources to First Peoples, including under the VAAF. Treaty provides a pathway to further the commitment to self-determination and it is within this context of this First Peoples' led ambitions that the Government is seeking to be guided by the Commission's recommendations.
79. This means that the design and implementation of a reformed Child Protection system for First Peoples children will need to be sufficiently fluid and flexible to respond to, and align with, the progress and outcomes of Treaty negotiations.
80. However, given the immediacy of the issues we face, we are also listening to experts in First Peoples service delivery and community members who do not want us to pause much-needed reforms that are taking us on the next steps towards a more First Peoples-led service system, and keep more First Peoples children and families together.
81. Continuing efforts to achieve the existing target of 100 per cent of First Peoples children in First Peoples care, as well as better supporting families at risk of Child Protection involvement with culturally appropriate diversionary and early intervention services, will be important to address the over-representation of First Peoples children in the Child Protection system.

---

<sup>43</sup> First Peoples Assembly of Victoria and the State of Victoria, Treaty Negotiation Framework, 2022, cl. 25.3(b). First Peoples' Assembly of Victoria, Submission to the Yoorrook Justice Commission, 5 December 2022, 13, <https://www.firstpeoplesvic.org/wp-content/uploads/2022/12/Assembly-Submission-to-Yoorrook-Critical-Issues-December-2022-.pdf>; First Peoples' Assembly of Victoria and the State of Victoria, Treaty Negotiation Framework, 2022, cl. 3.3 (b): 'a Statewide Treaty will support First Peoples as a collective to exercise self-determination, including, if agreed, by structural reform to government in Victoria'

## Conclusion

82. The Government is grateful to have the opportunity to contribute to the important work of the Commission. The work that the Commission is undertaking is historic and will undoubtedly lead to important change within Victoria.
83. The Government is committed to enabling the design and implementation of a Child Protection and Family Services system by First Peoples for their children and looks forward to the Commission's recommendations as to how we can do better, so that we can together forge a new relationship between First Peoples and the State of Victoria based on equality, truth and justice.
84. Colonisation, justified by an ideology of racial supremacy has caused immeasurable damage to First Peoples, the effects of which are still evident today. The Government acknowledges this and through Truth and Treaty has set up a process to engage with Victoria's First Peoples to begin to address this.
85. To date, the Government has largely attempted to respond to systemic injustices by working with First Peoples governance forums, experts and ACCOs to shift and reform systems towards better outcomes.
86. The Commission now has a mandate to make bold recommendations, and the Government, in partnership with the Assembly, is looking to the Commission to provide a pathway forward to be considered.
87. Truth and Treaty offers all Victorians – First Peoples and non-First Peoples – an opportunity to shape a new relationship and a new future. This is an opportunity for a renewed state identity –, a shared understanding of our history, and an enduring respect for First Peoples fundamental right to self-determination.